(8)

Supreme Court, U.S.
FILED
AUG 3 0 2004
OFFICE OF THE CLERK

No. 03-1423

IN THE

Supreme Court of the United States

DARIN L. MUEHLER AND ROBERT BRILL,

Petitioners,

v.

IRIS MENA,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

JOINT APPENDIX

CARTER G. PHILLIPS*
JOSEPH R. GUERRA
MATTHEW J. WARREN
SIDLEY AUSTIN BROWN & WOOD LLP
1501 K Street, NW
Washington, DC 20005
(202) 736-8000

KAREN K. PEABODY
DAVID L. NYE
NYE, PEABODY & STIRLING, LLP
33 West Mission Street
Suite 201
Santa Barbara, CA 93101
(805) 963-2345

DAVID H. HIRSCH
CITY ATTORNEY
2929 Tapo Canyon Road
City of Simi Valley, CA 93063
(805) 583-6714

Counsel for Petitioners

PAUL L. HOFFMAN*
ERWIN CHEMERINSKY
MICHAEL S. MORRISON
SCHONBRUN DESIMONE SEPLOW HARRIS & HOFFMAN LLP
723 Ocean Front Walk
Venice, CA 90291
(301) 396-0731

JAMES S. MULLER
LAW OFFICES OF JAMES S. MULLER
3435 Wilshire Boulevard
Suite 2900
Los Angeles, CA 90010
(213) 381-3299

Counsel for Respondent

* Counsel of Record

August 30, 2004

PETITION FOR CERTIORARI FILED APRIL 13, 2004
CERTIORARI GRANTED JUNE 14, 2004

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Trial Exhibit No. 7: Simi Valley Police Department Supplemental Reports #98-01076, *Mena* v. *City of Simi Valley*, No. CV 98-8512 AHM (C.D. Cal. 2001) 228

Trial Exhibit No. 10: Simi Valley Policy and Procedure Manual, *Mena* v. *City of Simi Valley*, No. CV 98-8512 AHM (C.D. Cal. 2001) 233

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NOTICE

The following documents have been omitted in the printing of this Joint Appendix. They may be found in the Petitioners' Appendix to the 03-1423 Petition For A Writ Of Certiorari at the following pages:

Mena v. *City of Simi Valley*, 354 F.3d 1015 (9th Cir. 2004) 23a-34a

Mena v. *City of Simi Valley*, 332 F.3d 1255 (9th Cir. 2003) 1a-22a

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
(WESTERN DIV.)

Civil Docket For Case #: 98-CV-8512

IRIS MENA, JOSE E. MENA,
Plaintiffs,

v.

CITY OF SIMI VALLEY, RANDY G. ADAMS, DARIN L. MUEHLFR, ROBERT BRILL, M. HODGES #309, R. NMI JONES #305, V. ALLEGRA #320, A. MCCORD, LT. DICK THOMAS, SGT. RON CHAMBERS, BILL LAPPIN, ARNOLD BAYNARD, JEFF DOMINICK, JACK GREENBURG, RICHARD LAMB, FRANK AHLVERS, JOHN ADAMCZYK, TIM BROWN,
Defendants.

RELEVANT DOCKET ENTRIES

DATE	NO.	PROCEEDINGS
10/19/98	1	COMPLAINT filed Summons(es) Issued referred to Discovery Ann I. Jones (bg) [Entry date 10/20/98]
11/18/98	2	ANSWER filed by defendant Simi Valley City of, defendant Randy G Adams, defendant Darin L Muehler, defendant Robert Brill, defendant M Hodges, defendant R NMI Jones, defendant Unknown McConnell, defendant V Allegra, defendant A McCord to complaint [1-1]; jury demand (jag) [Entry date 11/19/98]

DATE	NO.	PROCEEDINGS
12/4/98	3	JOINT REPORT OF EARLY MEETING OF COUNSEL filed. Estimated length of trial 6-9 days. (lori) [Entry date 12/07/98]
2/2/99	4	ORDER re Joint Status Rep & MSC by Judge A. H. Matz ; mandatory status conference set on 1:30 3/15/99 (lori) [Entry date 02/03/99]
2/9/99	5	STIPULATION and ORDER tht the crt hereby deems plfs' 1st A/C, ldge w/ the crt, fi. Plf's 1st A/C is deemed svd purs to LR 3.8.4 by Judge A. H. Matz (lori) [Entry date 02/10/99]
2/9/99	6	1st AMENDED COMPLAINT [1-1] by plaintiff Jose E Mena, plaintiff Iris Mena terminating defendant Does; adding Dick Thomas, Ron Chambers, Bill Lappin, Arnold Baynard, Jeff Dominick, Jack Greenburg, Richard Lamb, Frank Ahlvers, John Adamczyk, Tim Brown. (lori) [Entry date 02/10/99]
2/22/99	7	ANSWER to 1st A/C filed by dfts A McCord, V Allegra, Unknown McConnell, R NMI Jones, M Hodges, Robert Brill, Darin L Muehler, (Chief) Randy G Adams, Simi Valley City of, Dick Thomas, Ron Chambers, Bill Lappin, Arnold Baynard, Jeff Dominick, defendant Jack Greenburg, defendant Richard Lamb, defendant Frank Ahlvers, defendant John Adamczyk, defendant Tim Brown to amended complaint [6-1]; jury demand (lori) [Entry date 03/02/99]

DATE	NO.	PROCEEDINGS
3/9/99	9	Joint STATUS REPORT (lori) [Entry date 03/11/99]
3/10/99	8	ORDER re prop prot ord: 1) Paragraph 4 contemplates tht when "any Confidential material is used in any crt proc in this act, it shall not lose it confidential status thru such use." This paragraph must be revised to reflect tht all info used at trl is presumptively avail to all members of the public, unless sufficient cause is shown in adv of trl by Judge A. H. Matz (lori) [Entry date 03/11/99]
3/11/99	—	PLACED IN FILE—NOT USED re stip prot ord (cpy) (lori) [Entry date 03/12/99]
3/15/99	10	MINUTES: ; mandatory status conference held; Karen Peabody is design as lead cnsl. Crt refers this mtr to Mag Judge Jones for sttlmt purp. Crt ords plf to make a sttlmnt dmd & dft to consider the dmd. Last date for a sttlmnt conf is 8/16/99 by Judge A. H. Matz CR: Lynne Smith (lori) [Entry date 03/17/99]
		* * * *
6/11/01	97	JOINT JURY INSTRUCTIONS; Index submitted (bg) [Entry date 06/12/01]
6/11/01	98	TRIAL brief re qualified immunity submitted by defendants (bg) [Entry date 06/12/01]
6/11/01	99	TRIAL briefs re unlawful detention submitted by defendants (bg) [Entry date 06/12/01]

DATE	NO.	PROCEEDINGS
6/11/01	100	TRIAL brief re damage to property during search warrrant service submitted by defendant (bg) [Entry date 06/12/01]
6/11/01	101	TRIAL briefs re "Knock & Announce Requirement" submitted by defendants (bg) [Entry date 06/12/01]
6/11/01	102	TRIAL briefs re scope of search submitted by defendants (bg) [Entry date 06/12/01]
6/12/01	103	MINUTES: 1st Day Jury Trial impaneled & sworn; Opening Stmts made by Plfs & Dfts; Wits CST; Exhs rcd; Case cont to 6/13/01 @ 8:00 for fur trial; Dft's motion in limine to exclude testimony of undisclosed wits [95-1] granted in part/denied in part w/conditions by Judge A. H. Matz CR: Lynne Smith (ir) [Entry date 06/15/01]
6/13/01	105	MINUTES: 2nd day J/T by Judge A.H. Matz; ; jury trial cont on 8:00 6/14/01 CR: Lynne Smith (yc) [Entry date 06/19/01]
6/14/01	106	MINUTES: 3rd day J/T by Judge A. H. Matz; ; jury trial cont on 8:00 6/15/01 CR: Lynne Smith (yc) [Entry date 06/19/01]
6/15/01	104	TRIAL briefs submitted by plaintiff Jose E Mena, plaintiff Iris Mena, re admissibility of expert opinions. (yc) [Entry date 06/19/01]
6/15/01	107	MINUTES: 4th day J/T by Judge A.H. Matz; ; jury trial cont on 8:30 6/19/01; Crt and cnsl confer re jury inst. Crt instructs cnsl to come to crt on 6/18/01 no earlier than 4pm to view the revised jury inst. CR: Lynne Smith (yc) [Entry date 06/19/01]

DATE	NO.	PROCEEDINGS
6/18/01	108	MINUTES: Status conf hld; crt & cnsl confer re final jury instrucs & special verdict forms; dfts w/draw exh 53 from evidence by Judge A. H. Matz CR: Lynne Smith (lc) [Entry date 06/25/01]
6/19/01	109	MINUTES: J/T 5th day; wits CST; exhs identified; dft rest; closing arguments by plf & dfts; crt instructs jury; balif sworn; jury retires to deliberate; jury trial cont on 8:45 6/20/01; crt denies plf rule 50 motion by Judge A. H. Matz CR: Lynne Smith (lc) [Entry date 06/25/01]
6/19/01	111	TRIAL WITNESS & EXHIBIT list (lc) [Entry date 06/26/01]
6/19/01	112	JURY INSTRUCTIONS submitted (1c) [Entry date 06/26/01]
6/20/01	110	MINUTES: J/T 6th day; jury retires to deliberate; jury trial cont on 8:00 6/21/01; after conferring with cnsl, Crt resp to jury notes 2, 3, & 4 by Judge A. H. Matz CR: Lynne Smith (lc) [Entry date 06/25/01]
6/21/01	113	JURY LIST (seating chart) (lc) [Entry date 06/26/01]
6/21/01	114	JURY NOTES #1 filed (lc) [Entry date 06/26/01]
6/21/01	115	JURY NOTES #2 filed (lc) [Entry date 06/26/01]
6/21/01	116	JURY NOTES #3 filed (lc) [Entry date 06/26/01]

DATE	NO.	PROCEEDINGS
6/21/01	117	JURY NOTES #4 filed (lc) [Entry date 06/26/01]
6/21/01	118	JURY NOTES #5 filed (lc) [Entry date 06/26/01]
6/21/01	119	JURY NOTES #6 filed (lc) [Entry date 06/26/01]
6/21/01	120	SPECIAL VERDICT for plf against defendant Darin L Muehler for $10,000 nominal damages & $20,000 punitive damages for Iris Mena; against defendant Robert Brill for $10,000 nominal damages for Iris Mena & $20,000.00 punitive damages for Iris Mena (lc) [Entry date 06/26/01] [Edit date 06/26/01]
6/21/01	121	ATTORNEY'S LIST (lc) [Entry date 06/26/01]
6/21/01	122	MINUTES: J/T 7th day; fld wit & exh list, juror list; jury rtns; jury verdict in favor of plfs read & fld; jury polled, jury notes & jury instrucs fld; Crt ORD Mr Muller to prep jgm & svc it on Mr Nye; jury trial ends 6/21/01 terminating case (MD JS-6) by Judge A. H. Matz CR: Lynne Smith (ENT 6/26/01) (lc) [Entry date 06/26/01]
7/10/01	123	JUDGMENT AND ORDER that plf have jgm agnst dft Darin Muehler in amt of $10,000.00 in general damages & in amt of $20,000.00 punitive damages & recover costs from dfts Darin Muehler & Robert Brill; Iris Mena recover atty fees to be determined by crt frm Darin Muehler &

DATE	NO.	PROCEEDINGS
		Robert Brill; plf shall propose amts to dfts lawyer, if no agreement, make a motion by Judge A. H. Matz (ENT 7/11/01) send/ntcs (lc) [Entry date 07/11/01]
7/25/01	124	NOTICE OF MOTION AND MOTION by defendants Darin L Muehler, Robert Brill to alter or amend judgment [123-1] (FRCP 59(a), or alt for new trial (FRCP 59(a), & renewed mot for jgm as a matter of law (FRCP 50(b); motion hearing set for 10:00 8/20/01; memo of PA; Decl of David L Nye (ir) [Entry date 07/26/01]

* * * *

U.S. COURT OF APPEALS
NINTH CIRCUIT

Court of Appeals Docket #: 01-56673

IRIS MENA,
Plaintiff-Appellee,

and

JOSE E. MENA,
Plaintiff,

v.

CITY OF SIMI VALLEY; RANDY G. ADAMS; MARVIN HODGES; ROY JONES; VINCENT ALLEGRA; ALAN MCCORD; RICHARD THOMAS; RONALD CHAMBERS; WILLIAM LAPPIN; ARNOLD BAYNARD; JEFFREY DOMINICK; JACK GREENBURG; RICHARD LAMB; FRANK AHLVERS; JOHN ADAMCZYK; TIM BROWN,
Defendants,

and

DARIN L. MUEHLER; ROBERT BRILL,
Defendants-Appellants.

DOCKET ENTRIES

DATE	PROCEEDINGS
9/26/01	DOCKETED CAUSE AND ENTERED APPEARANCES OF COUNSEL. CADS SENT (Y/N): n. setting schedule as follows: Fee payment is due 10/10/01 ; appellant's designation of RT is due 9/20/01, ; appellee's designation of

DATE	PROCEEDINGS
	RT is due 10/1/01; appellant shall order transcript by 10/10/01, ; court reporter shall file transcript in DC by 11/13/01, ; certificate of record shall be filed by 11/19/01 ; appellant's opening brief is due 12/27/01, ; appellees' brief is due 1/28/02; appellants' reply brief is due 2/11/02, ; [01-56673] (pg)
9/26/01	Filed David L. Nye for Appellant Darin L. Muehler & Robert Brill Civil Appeals Docketing Statement served on 9/7/01 (to CONFATT) [01-56673] [01-56673] (pg)
9/26/01	Prev 99-56720 JTN SST MSB to any PANEL [01-56673] (aw)
10/18/01	Received notification from District Court re payment of docket fee. (Date: pd: 10/16/01) [01-56673] (lu)
11/1/01	Filed order CONFATT (bsp) This case is under consideration for inclusion in the mediation program. A settlement assessment conference will be held by telephone on 11/19/01, at 11:00 am Pacific (SF) time. . . . The br sch previously set by the ct remains in effect. [01-56673] (gva)
11/27/01	Filed order CONFATT (MAC) releasing case from CONFATT and the briefing schedule set forth in the courts order filed 9/26/01 shall remain in effect. [01-56673] (jjf)
12/19/01	Filed motion & clerk order Promo: (Deputy Clerk: cb) The clerk is in receipt of aplts' notice of reporter default. Review of the notice reveals that payment arrangement were made 11/19/01; the rts are therefore due 12/19/01. The br sch is as follows: the opening br and excs are due 1/28/02,

DATE	PROCEEDINGS
	the ans br is due 2/27/02, and the optional rpy br is due 14 days from service of the ans br. A copy of this order shall be provided to Ctr Lynn Smith. (mtn rcvd 12/13/01) [4322429-1] [01-56673] (gva)
1/4/02	Filed Court Reporter's motion & clerk order Promo: (Deputy Clerk: cb) Ctr Lynne Smith's mtn for an ex.tm.f the rt is granted. The rt is due 2/20/02. . . . The br sch is as follows: the opening br and excs are due 4/1/02, the ans br is due 5/1/02 and the optional rpy br is due 14 days from service of the ans br. A copy of this order shall be provided to the ctr at the d.c. (mtn rcvd 12/21/01) [01-56673] (gva)
2/1/02	Rec'd notice of change of firm name from David L. Nye, counsel for John Adamczyk, Tim Brown, Jack Greenburg, Richard Lamb, William Lappin, Arnold Baynard, Jeffrey Dominick, Frank Ahlvers, Richard Thomas, Ronald Chambers, Vincent Allegra, Alan McCord, Robert Brill, Marvin Hodges, Roy Jones, City of Simi Valley, Randy G. Adams and Darin L. Muehler dated 01/29/02. (CASEFILE) [01-56673] (sm)
2/26/02	Filed court reporter motion & clerk order Promo: (Deputy Clerk: lkk) Ctr Lynne Smith's second motion for an ex.tm.f the ctr's rt is granted. The rt is due 4/1/02. . . . The opening br is due 5/13/02. The answering br is due 6/12/02 and the optional rpy is due 14 days from service of the ans br. A copy of this order shall be provided to the ctr at the dc. (mtn rcvd 2/21/02) [4370747-1] [01-56673] (gva)

DATE	PROCEEDINGS
5/10/02	Filed court reporter motion & clerk order Promo: (Deputy Clerk: lkk) The ct is in receipt of ctr Lynn Smith's ltr dated 4/30/02 and shall construed it as a mtn to modify the clerk's 2/26/02 order. So construed, the mtn is granted. This order waives the mandatory fee reduction provided that the rts are filed within the time allowed in this order. (mtn rcvd 5/3/02) [4428484-1] [01-56673] (gva)
5/10/02	14 day oral extension by phone of time to file Appellant Darin L. Muehler, Appellant Robert Brill brief. [01-56673] appellants' brief due 5/28/02, ; appellees' brief due 6/27/02; appellants' reply brief due, ; (jlc)
5/22/02	Filed certificate of record on appeal RT filed in DC 4/3/02. [01-56673] (bg)
6/18/02	Received notice of appearance of Paul L. Hoffman as counsel for aples; served on 6/14/02 (Casefile) [01-56673] (gva)
6/18/02	Filed original & 15 copies Appellants Darin L. Muehler, Robert Brill opening brief (Informal: n) 43 pages & 5 Excs in 2 Vols.; served on 5/28/02 [01-56673] (gva)
6/27/02	Filed motion & clerk order Promo: (Deputy Clerk: cag) Aplt's mtn for leave to file a late br is denied as unnecessary. The opening br was timely received and filed. Aple's mtn for an ex.tmf. in which to file the ans br is granted. The ans br is due 8/19/02 and the optional rpy br is due 14 days from service of the ans br. . . . (mtn rcvd 6/21/02) [4467666-1] [01-56673] (gva)

DATE	PROCEEDINGS
8/21/02	14 day oral extension by phone of time to file Appellant Darin L. Muehler, Appellant Robert Brill's reply brief. [01-56673] appellants' reply brief due 9/19/02,; (terr)
8/21/02	Filed original & 15 copies Aple Iris Mena's 49 pages brief, 5 Supplemental Excs.; served on 8/19/02 [01-56673] (gva)
9/20/02	Filed original & 15 copies Aplts' reply brief (Informal: n) 13 pages; 5 Supplemental Excs.; served on 9/19/02 [01-56673] (gva)
9/27/02	Filed motion & clerk order Promo: (Deputy Clerk: tah) The aplt's mtn requesting transfer of an exhibit from the cc, and any response thereto, shall be referred for disposition to the panel that considers the merits of the case. The exhibit shall be retained in the dc pending the ct's decision on the instant motion. (mtn rcvd 9/20/02) [01-56673] (gva)
11/1/02	Calendar check performed [01-56673] (aw)
11/18/02	Calendar materials being prepared. [01-56673] [01-56673] (aw)
11/20/02	CALENDARED: PASA Feb 4 2003 900 am Courtroom 3 [01-56673] (aw)
1/29/03	Filed order (Depuy Clerk: hh) Defs/Aplts' Motion Requesting Transfer of Exhibit on appeal is denied. (phoned/faxed) [4542138-1] [01-56673] (gva)
2/4/03	ARGUED AND SUBMITTED TO Harry PREGERSON, Stephen R. REINHARDT, Glenn L. Archer [01-56673] (dr)

DATE	PROCEEDINGS
6/23/03	FILED OPINION: AFFIRMED (Terminated on the Merits after Oral Hearing; Affirmed; Written, Signed, Published. Harry PREGERSON, author; Stephen R. REINHARDT; Glenn L. Archer.) FILED AND ENTERED JUDGMENT. [01-56673] (dg)
7/3/03	Filed motion & clerk order (Deputy Clerk: gva) granting aplts' motion to extend time in which to file a petition for rehearing en banc; to and including 7/14/03. (mtn rcvd 7/3/03) [4781447-1] [01-56673] (gva)
7/7/03	Filed Aple Iris Mena bill of costs ($289.68); served on 7/3/03 [01-56673] (gva)
7/10/03	Filed Iris Mena motion to have District Court decide attorneys fees on appeal; declaration of Paul Hoffman; served on 7/9/03 (Panel) [4786253] (gva)
7/14/03	[4788284] Filed original and 50 copies Appellant Darin L. Muehler petition for panel rehearing and petition for rehearing en banc 15 p.pages, served on 7/11/03 (PANEL AND ALL ACTIVE JUDGES) [01-56673] (dg)
7/18/03	Filed Aplt Robert Brill opposition to motion to have district court decide attorney's fees on appeal; declaration of Karen Peabody; served on 7/17/03 (Panel) [01-56673] (gva)
7/24/03	Filed Aple Iris Mena reply to opposition to motion to have court decide attorneys fees on appeal; served on 7/23/03 (Penal) [01-56673] (gva)

DATE	PROCEEDINGS
8/4/03	Filed order (Harry PREGERSON): Aple is requested to file a response to the P/R en banc within 21 days of the date of filing of this order. [01-56673] (dg)
8/12/03	Filed Aple Iris Mena motion to extend time to file response to petition for rehearing and suggestion for rehearing en banc; declaration of Paul L. Hoffman; served on 8/11/03 (Panel) [4816345] (gva)
8/20/03	Filed order (Harry PREGERSON, Stephen R. REINHARDT, Glenn L. Archer): Aple Mena's motion for extension of time to file response to petition for rehearing and suggestion for rehearing en banc is granted. The response shall be filed on or before 9/2/03 (phoned/faxed) [4816345-1] [01-56673] (gva)
9/2/03	Filed Aple Iris Mena's response to Aplts' 16 pages petition for enbanc rehearing; served on 8/29/03 (Panel And All Active Judges) [4788284-1] [01-56673] (gva)
1/14/04	Filed order FOR PUBLICATION (Harry PREGERSON, Stephen R. REINHARDT, Glenn L. Archer): . . . The petition for rehearing and the suggestion for rehearing en banc are denied. [4788284-1] [01-56673] (gva)
1/22/04	MANDATE ISSUED with costs taxed in the reduced amount of $144.02 in favor of aple. [01-56673] (mhf)
1/26/04	Filed aple Iris Mena's mtn to have dc decide attys fees; [01-56673] served on 1/23/] (mhf)

DATE	PROCEEDINGS
1/30/04	Filed order (Harry PREGERSON, Stephen R. REINHARDT, Glenn L. Archer): Appellee's motion to have District Court decide attorneys fees on appeal is granted. [01-56673] (gva)
2/2/04	Filed Aplt's opposition to motion to have district court decide attorneys fees on appeal; declaration of Karen Peabody; served on 1/29/04 (Panel) [01-56673] (gva)
4/20/04	Received notice from Supreme Court: petition for certiorari filed Supreme Court No. 03-1423 filed on 4/13/04. (Panel) [01-56673] (gva)
4/22/04	NO ORIGINAL RECORD (jay)
6/28/04	Received notice from Supreme Court, petition for certiorari GRANTED on 6/14/04. Supreme Court No. No. 03-1423 (Panel) (gva)

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

[Filed Feb. 9, 1999]

Case No. CV 98-8512 AHM (AIJx)

IRIS MENA and JOSE E. MENA,
Plaintiffs,

v.

CITY OF SIMI VALLEY, CHIEF OF POLICE RANDY G. ADAMS, POLICE OFFICERS DARIN L. MUEHLER, ROBERT BRILL, M. HODGES #309, R. JONES #305, MCCONNELL, V. ALLEGRA #320, A. MCCORD, LT. DICK THOMAS, SGT. RON CHAMBERS, BILL LAPPIN, ARNOLD BAYNARD, JEFF DOMINICK, JACK GREENBURG, RICHARD LAMB, FRANK AHLVERS, JOHN ADAMCZYK, AND TIM BROWN,
Defendants.

FIRST AMENDED COMPLAINT FOR DAMAGES FOR:

1) VIOLATIONS OF CIVIL RIGHTS UNDER 42 U.S.C. § 1983 (WRONGFUL SEARCH);
2) VIOLATIONS OF CIVIL RIGHTS UNDER 42 U.S.C. § 1983 (ILLEGAL DETENTION AND ARREST)
3) VIOLATIONS OF CIVIL RIGHTS UNDER CAL. CIV. CODE SECTION 52.1. (WRONGFUL SEARCH)
4) VIOLATIONS OF CIVIL RIGHTS UNDER CAL. CIV. CODE SECTION 52.1. (ILLEGAL DETENTION AND ARREST)
5) NEGLIGENCE

PARTIES

1. Plaintiffs IRIS MENA and JOSE MENA are competent adults.

2. Defendant CITY OF SIMI VALLEY is a City operating pursuant to its Charter and the laws of the State of California. Defendant RANDY G. ADAMS is the Chief of Police of the CITY OF SIMI VALLEY.

3. Defendant CITY OF SIMI VALLEY is vicariously liable for the wrongful conduct of their employees pursuant to Cal. Gov't Code § 815.2, as to the state law claims for relief. .

4. Defendants DARIN L. MUEHLER, ROBERT BRILL, M. HODGES #309, R. JONES #305, MCCONNELL, V. ALLEGRA #320, A. MCCORD, LT. DICK THOMAS, SGT. RON CHAMBERS, BILL LAPPIN, ARNOLD BAYNARD, JEFF DOMINICK, JACK GREENBURG, RICHARD LAMB, FRANK AHLVERS, JOHN ADAMCZYK, AND TIM BROWN are law enforcement officers.

5. In doing the acts herein alleged, all the foregoing defendants were acting under color of state law and within the scope and course of their employment.

6. Plaintiffs sue defendants Does 1 to 10 by such fictitious names because their true identities have yet to be ascertained.

7. Plaintiffs have complied with the requirements of Government Code §§905 et. seq. This action was filed within six months of the date of rejection of their claims.

FIRST CLAIM FOR RELIEF

VIOLATIONS OF CIVIL RIGHTS UNDER 42 U.S.C. § 1983—WRONGFUL SEARCH

(PLAINTIFFS IRIS MENA AND JOSE E. MENA AGAINST DEFENDANTS CITY OF SIMI VALLEY, CHIEF OF POLICE RANDY G. ADAMS, POLICE OFFICERS DARIN L. MUEHLER, ROBERT BRILL, M. HODGES #309, R. JONES #305, MCCONNELL, V. ALLEGRA #320, A. MCCORD, LT. DICK THOMAS, SGT. RON CHAMBERS, BILL LAPPIN, ARNOLD BAYNARD, JEFF DOMINICK, JACK GREENBURG, RICHARD LAMB, FRANK AHLVERS, JOHN ADAMCZYK, AND TIM BROWN)

8. Plaintiffs incorporate by reference the allegations of paragraphs 1-7 of this complaint.

9. Plaintiffs IRIS MENA AND JOSE E. MENA resided at 1363 Patricia Street, Simi Valley, California on February 3, 1998.

10. On or about January 29, 1998, defendant police officers obtained a search warrant for 1363 Patricia Street, Simi Valley, California and served it at the aforementioned residence. Plaintiffs are informed and believe and thereon allege that the warrant was overbroad, obtained in bad faith, that the warrant was not supported by probable cause, that a reasonable police officer should have known that the warrant was lacking in probable cause, and that the warrant was not properly issued by a neutral and detached magistrate.

11. On or about February 3, 1998 defendant police officers without a valid search warrant, probable cause, exigent circumstances or permission entered and searched the entire residence located at 1363 Patricia Street, Simi Valley, California.

12. Defendants police officers executed the search in an unreasonable manner, including, without limitation, forcing entry into plaintiffs' home, destroying property unnecessarily, ransacking it, pointing guns at plaintiff IRIS MENA, and arresting and detaining plaintiff IRIS Mena for an unreasonable time and in an unreasonable manner and without probable cause or reasonable suspicion.

13. Defendants police officers each failed to prevent the illegal entry into plaintiffs' home by their co-defendants and others and each failed to prevent the unreasonable manner in which plaintiffs' home was searched and plaintiff IRIS MENA was treated by their co-defendants and others.

14. Plaintiffs are informed and believe and thereon allege that in doing the foregoing acts, each defendant was the agent and employee of each other defendant and was acting within such agency and employment.

15. Plaintiffs are informed and believe and thereon allege that at all times herein mentioned, the CITY OF SIMI VALLEY and CHIEF ADAMS authorized and ratified the wrongful acts of the individual defendants and that defendants' wrongful conduct was the result of a policy, custom and practice of the CITY OF SIMI VALLEY and CHIEF ADAMS to harass, intimidate and violate the rights of minority residents, including Latinos. Pursuant to this policy, custom and practice, defendants CITY OF SIMI VALLEY and CHIEF ADAMS maintained and employed the aforementioned individual defendants as police officers and knew or should have known that these defendants each had a propensity for violence and racially based discriminatory conduct. Moreover, defendants CITY OF SIMI VALLEY and CHIEF ADAMS inadequately trained, supervised and instructed these defendants in the arts of law enforcement.

16. As a proximate result of the foregoing wrongful acts of defendants, and each of them, plaintiffs have been hurt and injured in their health, strength and activity, sustaining injury to their nervous system and person, all of which injuries have caused and continue to cause plaintiffs great mental, physical and nervous pain and suffering, humiliation, shock, distress and anguish.

17. As a proximate result of the foregoing wrongful acts of defendants, and each of them, real and personal property belonging to plaintiffs was destroyed and damaged.

18. As a proximate result of the foregoing wrongful acts of defendants, and each of them, plaintiffs have lost income in an amount in accordance with proof.

19. As a proximate result of the foregoing wrongful acts of defendants, and each of them, plaintiffs have incurred medical expenses in an amount in accordance with proof.

20. In doing the foregoing wrongful acts, defendants, and each of them, were motivated by invidious, anti-latino animus. The wrongful acts, and each of them, were willful, oppressive, fraudulent and malicious, and were conducted in reckless disregard of plaintiff's federal constitutional rights.

21. By way of the foregoing, defendants, acting under color of state law, deprived plaintiffs of rights, privileges, and immunities secured by the Constitution and laws of the United States, in particular the Fourth and Fourteenth Amendments of the United States Constitution, all to plaintiff's damage as hereinabove alleged.

SECOND CLAIM FOR RELIEF

VIOLATIONS OF CIVIL RIGHTS UNDER 42 U.S.C. § 1983—ILLEGAL DETENTION AND ARREST

(PLAINTIFF IRIS MENA AGAINST DEFENDANTS CITY OF SIMI VALLEY, CHIEF OF POLICE RANDY G. ADAMS, POLICE OFFICERS DARIN L. MUEHLER, ROBERT BRILL, M. HODGES #309, R. JONES #305, MCCONNELL, V. ALLEGRA #320, A. MCCORD, LT. DICK THOMAS, SGT. RON CHAMBERS, BILL LAPPIN, ARNOLD BAYNARD, JEFF DOMINICK, JACK GREENBURG, RICHARD LAMB, FRANK AHLVERS, JOHN ADAMCZYK, AND TIM BROWN)

22. Plaintiffs incorporate by reference the allegations of paragraphs 1-21 of this complaint.

23. Defendants detained and arrested plaintiff IRIS MENA without probable cause or reasonable suspicion of criminal activity.

24. Defendants each failed to prevent or stop the illegal detention and arrest of plaintiff IRIS MENA by their co-defendants.

THIRD CLAIM FOR RELIEF

VIOLATIONS OF CIVIL RIGHTS UNDER CAL. CIV. CODE § 52.1—WRONGFUL SEARCH

(PLAINTIFFS IRIS MENA AND JOSE E. MENA AGAINST DEFENDANTS CITY OF SIMI VALLEY, CHIEF OF POLICE RANDY G. ADAMS, POLICE OFFICERS DARIN L. MUEHLER, ROBERT BRILL, M. HODGES #309, R. JONES #305, MCCONNELL, V. ALLEGRA #320, A. MCCORD, LT. DICK THOMAS, SGT. RON CHAMBERS, BILL LAPPIN, ARNOLD BAYNARD, JEFF DOMINICK, JACK GREENBURG, RICHARD LAMB, FRANK AHLVERS, JOHN ADAMCZYK, AND TIM BROWN)

25. Plaintiffs incorporate by reference the allegations of paragraphs 1-24 of this complaint.

26. Defendants by means of threats, coercion and intimidation interfered with the constitutional rights of plaintiffs, by entering and searching their home, in violation of the California Constitution and the immunities secured by the Fourth, and Fourteenth Amendments to the United States Constitution, all to plaintiffs' damages as hereinabove alleged.

FOURTH CLAIM FOR RELIEF

VIOLATIONS OF CIVIL RIGHTS UNDER CAL. CIV. CODE § 52.1—WRONGFUL DETENTION AND ARREST

(PLAINTIFF IRIS MENA AGAINST DEFENDANTS CITY OF SIMI VALLEY, CHIEF OF POLICE RANDY G. ADAMS, POLICE OFFICERS DARIN L. MUEHLER, ROBERT BRILL, M. HODGES #309, R. JONES #305, MCCONNELL, V. ALLEGRA #320, A. MCCORD, LT. DICK THOMAS, SGT. RON CHAMBERS, BILL LAPPIN, ARNOLD BAYNARD, JEFF DOMINICK, JACK GREENBURG, RICHARD LAMB, FRANK AHLVERS, JOHN ADAMCZYK, AND TIM BROWN)

27. Plaintiffs incorporate by reference the allegations of paragraphs 1-26 of this complaint.

28. Defendants by means of threats, coercion and intimidation interfered with the constitutional rights of plaintiff IRIS MENA, by forcibly detaining and arresting her in violation of the California Constitution and the immunities secured by the Fourth, and Fourteenth Amendments to the United States Constitution, all to plaintiff's damages as hereinabove alleged.

FIFTH CLAIM FOR RELIEF

NEGLIGENCE

(PLAINTIFFS IRIS MENA AND JOSE E. MENA AGAINST DEFENDANTS CITY OF SIMI VALLEY, CHIEF OF POLICE RANDY G. ADAMS, POLICE OFFICERS DARIN L. MUEHLER, ROBERT BRILL, M. HODGES #309, R. JONES #305, MCCONNELL, V. ALLEGRA #320, A. MCCORD, LT. DICK THOMAS, SGT. RON CHAMBERS, BILL LAPPIN, ARNOLD BAYNARD, JEFF DOMINICK, JACK GREENBURG, RICHARD LAMB, FRANK AHLVERS, JOHN ADAMCZYK, AND TIM BROWN)

29. Plaintiffs replead each and every allegation contained in paragraphs 1 through 28, and by this reference, incorporate the same herein and make each a part hereof:

30. Defendants negligently and carelessly entered and searched plaintiffs' home and detained and arrested plaintiffs, causing the injuries complained of herein.

31. Defendants are liable for their negligent acts pursuant to Government Code § 820.

PRAYER

WHEREFORE, plaintiffs pray for judgment as follows:

(a) Compensatory general and special damages according to proof;

(b) Exemplary damages, against each of the individual defendants, according to proof, as to Claims for Relief 1-4;

(c) Reasonable attorney's fees and expenses of litigation, as to Claims for Relief 1-4;

(d) Costs of suit necessarily incurred herein; and,

(e) Such further relief as the court deems just or proper.

Dated: February 3, 1999

LAW OFFICES OF JAMES S. MULLER

By /s/ James S. Muller
JAMES S. MULLER
Attorney for Plaintiffs

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

[Filed Feb. 22, 1999]

CASE NO.: CV 98-85 2 AHM (AIJx)

IRIS MENA and JOSE MENA,
Plaintiff,

vs.

CITY OF SIMI VALLEY, *et al.*,
Defendants.

ANSWER TO FIRST AMENDED COMPLAINT

Demand for Jury Trial

Comes now defendants CITY OF SIMI VALLEY, CHIEF ADAMS, and OFFICERS MUEHLER, BRILL, HODGES, JONES, McCONNELL, ALLEGRA and McCORD, THOMAS, CHAMBERS, LAPPIN, BAYNARD, DOMINICK, GREENBURG, LAMB, AHLVERS, ADAMCZYK, and BROWN, in answer to plaintiff's complaint admit, deny and allege as follows:

1. In answer to Paragraphs 3, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 23, 24, 26, 28, 30, and 31 of the Complaint, defendants deny each and every allegation contained therein.

2. Answering Paragraphs 1, 2, 5, and 7 of the Complaint, defendants admit the allegations of the said paragraphs.

3. Answering Paragraph of 4, 6, and 9 the Complaint, defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in said paragraph, and on that basis deny each and every allegation contained therein.

4. Answering Paragraphs 8, 22, 25, 27, and 29 of the Complaint, defendants incorporate the admissions and denials as set forth above.

5. Answering Paragraph 10 of the Complaint, defendants admit that a search warrant was obtained on or about January 29, 1998 for 1363 Patricia Street. Defendants deny the remaining allegations of said paragraph.

6. Defendants deny that by reason of any act or acts, fault, carelessness, omission or omissions on the part of these answering defendants, plaintiffs were injured or damaged in any sum whatsoever, whether as alleged in plaintiffs' complaint or otherwise or at all.

FIRST AFFIRMATIVE DEFENSE

7. That the plaintiffs' complaint fails to state a cause of action against these answering defendants for, pursuant to *Monell v. Department of Social Services of the City of New York* (1978) 56 L.Ed. 2d 611, there can be no recovery for a federal civil rights violation where there is no constitutional deprivation occurring pursuant to governmental custom.

SECOND AFFIRMATIVE DEFENSE

8. That pursuant to *Anderson v. Crieghton* (1987) 483 US 635, there can be no recovery for a federal civil rights violation where these defendants objectively acted in good faith and where a reasonable officer with like training and experience would have believed the complained of conduct to have been lawful. (*Mendoza v. Block*, 27 F.3d 1357, 1360 (9th Cir. 1994)).

THIRD AFFIRMATIVE DEFENSE

9. That plaintiffs' complaint does not state facts sufficient to constitute a cause of action against these defendants because, pursuant to *Parratt v. Taylor* (1981) 451

U.S. 527 and *Daniels v. Williams* (1986) 474 U.S. 327, simple negligence is not a Federal Civil Rights violation.

FOURTH AFFIRMATIVE DEFENSE

10. Defendants are informed and believe and upon such information and belief allege that plaintiffs were careless and negligent in and about the matters alleged in their complaint and that said carelessness and negligence proximately contributed to the loss and damages complained of, if any there were, and the damages, if any, recoverable by said plaintiffs shall be and must be diminished in proportion to the amount of fault attributable to said plaintiffs.

FIFTH AFFIRMATIVE DEFENSE

11. Defendants are informed and believe and upon such information and belief allege that third parties were careless and negligent in and about the matters alleged in plaintiffs' complaint, and that said carelessness and negligence proximately contributed to the loss and damages complained of, if any there were, and the damages, if any, recoverable by said plaintiffs shall be and must be diminished in proportion to the amount of fault attributable to said third parties.

SIXTH AFFIRMATIVE DEFENSE

12. That a public employee is not liable for an injury resulting from his act or omission where the act or omission was the result of the exercise of the discretion vested in him whether or not such discretion be abused. *Government Code* § 820.2.

SEVENTH AFFIRMATIVE DEFENSE

13. That, should there be an act or omission by these answering defendants, it occurred in the exercise of due care and the execution of the enforcement of the law and there is no liability resulting therefrom. *Government Code* § 820.4.

EIGHTH AFFIRMATIVE DEFENSE

14. That a public employee is not liable for an injury caused by his instituting or prosecuting any judicial or administrative proceeding within the scope of his employment even if he acts maliciously and without probable cause. *Government Code* § 821.6.

NINTH AFFIRMATIVE DEFENSE

15. That any detention and/or arrest of plaintiffs was reasonable, lawful and proper pursuant to *Penal Code* § 849.

TENTH AFFIRMATIVE DEFENSE

16. That any detention and/or arrest of plaintiffs was made with reasonable suspicion and/or probable cause to believe said plaintiffs committed a public offense and no civil liability shall arise pursuant to *Penal Code* §§ 836, 836.5 and 847.

ELEVENTH AFFIRMATIVE DEFENSE

17. That, if force was used to detain and/or effect an arrest of plaintiffs, the use of such force was privileged pursuant to *Penal Code* §§ 834, 843(a), 835, 835(a) and 847.

TWELFTH AFFIRMATIVE DEFENSE

18. That plaintiffs' conduct amounted to an assumption of the risk that they would be detained and/or arrested and that reasonable force would be used to affect such arrest if plaintiffs resisted.

THIRTEENTH AFFIRMATIVE DEFENSE

19. That insufficient facts have been stated to constitute a cause of action for punitive damages.

FOURTEENTH AFFIRMATIVE DEFENSE

20. That plaintiffs' action was not brought in good faith and is frivolous and by reason of these premises defendants are entitled to and will seek reasonable expenses, including attorneys fees, in defending this action.

FIFTEENTH AFFIRMATIVE DEFENSE

21. That at all times herein mentioned, defendants acted in good faith, without malice, and within the scope of their duties as peace officers of the City of Simi Valley.

SIXTEENTH AFFIRMATIVE DEFENSE

22. That neither a public entity nor a public employee is liable for an injury caused by the act or omission of another person (*Government Code* § 820.8).

SEVENTEENTH AFFIRMATIVE DEFENSE

30. That plaintiffs' claims, and each of them, are barred by the doctrine of unclean hands.

EIGHTEENTH AFFIRMATIVE DEFENSE

23. The complaint and each and every paragraph thereof fails to state facts sufficient to constitute a cause of action against these answering defendants.

NINETEENTH AFFIRMATIVE DEFENSE

24. That, except as otherwise provided by statute, a public entity is not liable for an injury, whether such injury arises out of an act or omission of the public entity or public employee or any other person. *Government Code* § 815(a).

TWENTIETH AFFIRMATIVE DEFENSE

25. That, except as otherwise provided by statute, a public entity is not liable for an injury resulting from an act or omission from any employee of the public entity where the employee is immune from liability. *Government Code* § 815.2(b).

WHEREFORE, these answering defendants pray that the plaintiffs take nothing by reason of their complaint on file herein, and that these answering defendants be awarded costs of suit, attorneys fees, and such other and further relief as the Court deems just and proper.

DATED: February 19, 1999

CARRINGTON & NYE

By /s/ David L. Nye
DAVID L. NYE
Attorneys for Defendants

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

[Filed Jan. 30, 2001]

CASE NO.: CV 98-8512 AHM (AIJx)

IRIS MENA AND JOSE MENA,
Plaintiff,

vs.

CITY OF SIMI VALLEY, *et al.*,
Defendants.

PARTIAL JUDGMENT [FRCP 54(b)]

Defendants' motion for summary judgment or, in the alternative, summary adjudication of claims came on for hearing before this Court on August 9, 1999, before the Honorable A. Howard Matz, District Judge Presiding. The evidence having been fully considered, the issues having been duly heard, and a decision having been duly rendered,

IT IS HEREBY ORDERED AND ADJUDGED that:

1. The motion for summary judgment of Defendant McConnell having been granted, plaintiffs will take nothing as against Defendant McConnell, the action against Defendant McConnell is hereby dismissed on the merits and Defendant McConnell is entitled to recovery of recoverable costs; and

2. The District Court's denial of defendants' joint motion for summary adjudication of plaintiffs' claim under 42 U.S.C. § 1983 that the search warrant was overbroad under the Fourth Amendment to the United States Constitution having been reversed by the Ninth Circuit Court of

Appeals and remanded for entry of judgment for defendants on this claim, plaintiffs will take nothing as against defendants on this claim and this claim against defendants is hereby dismissed on the merits.

IT IS SO ORDERED:

Dated January 30, 2001

/s/ A. Howard Matz
THE HON. A. HOWARD MATZ
United States District Judge

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

[Filed May 3, 2001]

CASE NO.: CV 98-8512 AHM (AIJx)

IRIS MENA and JOSE MENA,
Plaintiff,

vs.

CITY OF SIMI VALLEY, *et al.*,
Defendants.

DEFENDANTS' PROPOSED JURY INSTRUCTIONS

* * * *

INSTRUCTION NUMBER____

QUALIFIED IMMUNITY AFFIRMATIVE DEFENSE—
ELEMENTS AND BURDEN OF PROOF

In addition to denying plaintiffs' claim, each of the defendant officers has asserted a complete affirmative defense to plaintiffs' claim. This affirmative defense shields a police officer from liability for unlawful conduct performed as part of his duties as a police officer if a reasonable officer in the defendant's position could reasonably have believed at the time that he acted that his actions were lawful.

In order to prevail on this claim, each of the defendant officers has the burden of proving each of the following elements by a preponderance of the evidence:

1. that a reasonable officer in the defendant's position could reasonably have believed at the time that he acted that his actions were lawful.

If you find that the defendant has proven this element by a preponderance of the evidence then you should find for the defendant and against the plaintiff.

If, on the other hand, you find that: 1) the plaintiff has proven each of the elements of his or her claim against the defendant by a preponderance of the evidence; and 2) the defendant has failed to prove the element of his affirmative defense by a preponderance of the evidence, then you should find for the plaintiff and against the defendant.

AUTHORITY FOR INSTRUCTION NUMBER ____

9th Cir.Civ. Jury Instr., Nos. 5.5, 11.1.0 (modified); *Ortega v. O'Connor*, 146 F.3d 1149, 1155 (9th Cir. 1998).

TO BE GIVEN ___

REFUSED ___

GIVEN AS MODIFIED

AGREED UPON ___

* * * *

INSTRUCTION NUMBER ____

LAWFUL DETENTION DEFINED

Under the Fourth Amendment, a police officer may lawfully detain the occupants of a residence during the execution of a valid search warrant. This authority permits the officers to take actions to minimize the risk of harm engendered from the search, such as displaying force, seizing the occupants, and conducting pat down searches for weapons.

While the detention of an occupant during the period of a search does not generally constitute a violation of the right to be free from unreasonable searches under the Fourth Amendment to the United States Constitution, a detention in connection with a search may be unreasonable if the detention is

unnecessarily painful, degrading, prolonged, or if it involves an undue invasion of privacy.

AUTHORITY FOR INSTRUCTION NUMBER ____

Michigan V. Summers, 452 U.S. 692, 705 (1981); *Murdock v. Stout*, 54 F.3d 1437, 1442 (9th Cir. 1995); *Franklin v. Foxworth*, 31 F.3d 873, 876 (9th Cir. 1994); *Liston v. County of Riverside*, 120 F.3d 965, 977-979 (9th. Cir. 1997).

Submitted by defendant

TO BE GIVEN ___

REFUSED ___

GIVEN AS MODIFIED ___

AGREED UPON ___

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

[Filed June 1, 2001]

CASE NO.: CV 98-8512 AHM (AIJx)

IRIS MENA AND JOSE MENA,
Plaintiff,

vs.

CITY OF SIMI VALLEY, *et al.*,
Defendants.

DEFENDANTS' PROPOSED VERDICT FORM

Defendants submit the following proposed verdict form which has been modified from the one previously submitted to conform to the new (latest) list of defendants.

Dated: May 31, 2001

CARRINGTON & NYE

/s/ David L. Nye
DAVID L. NYE
Attorney for Defendants

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Case No. CV 98-8512 AHM

IRIS MENA and JOSE E. MENA,
Plaintiff,

v.

CITY OF SIMI VALLEY *et al.*,
Defendants.

SPECIAL VERDICT
(FIRST PHASE)

We, the jury in the above-entitled action, based on the evidence presented and on the instructions given to us by the Court, now reach our verdict on the issues submitted to us.

QUESTION NO. 1: *(Civil Rights violation pertaining to execution of the search warrant as to plaintiff Iris Mena)* Do you find that any of defendant officers violated plaintiff Iris Mena's right under the Fourth Amendment to the United States Constitution to be free from unreasonable search by the unlawful execution of the search warrant at 1363 Patricia Avenue?

	Yes	No
Darin Muehler	___	___
Robert Brill	___	___
Vincent Allegra	___	___
William Lappin	___	___

Please proceed on to the next question

QUESTION NO. 2: *(Civil Rights violation pertaining to execution of the search warrant as to plaintiff Jose Mena)* Do you find that any of the defendant officers violated plaintiff Jose Mena's right under the Fourth Amendment to the United States Constitution to be free from unreasonable search by the unlawful execution of the search warrant at 1363 Patricia Avenue?

	Yes	No
Darin Muehler	___	___
Robert Brill	___	___
Vincent Allegra	___	___
William Lappin	___	___

If you answered Question No. 1 or Question No. 2 "Yes" as to any defendant officer, please proceed to Question No. 3. If you answered Question No. 1 and Question No. 2 "No" as to all defendant officers, proceed to Question No. 4.

QUESTION NO. 3: *(Qualified Immunity)* For each defendant officer to which you answered "Yes" in Question No. 1 or 2, do you find that a reasonable officer in that officer's position could reasonably have believed at the time he acted that his actions were lawful?

	Yes	No
Darin Muehler	___	___
Robert Brill	___	___
Vincent Allegra	___	___
William Lappin	___	___

Please proceed in to the next question

QUESTION NO. 4: *(Civil Rights violation pertaining to detention of Iris Mena)* Do you find that any of the individually named defendant officers violated plaintiff Iris Mena's right under the Fourth Amendment to the United States Constitution to be free from unreasonable seizure by detaining her in an unlawful manner?

	Yes	No
Darin Muehler	___	___
Robert Brill	___	___
Vincent Allegra	___	___
William Lappin	___	___

If you answered Question No. 4 "Yes" as to any defendant officer, please proceed to Question No. 5. If you answered Question No. 4 "No" as to all defendant officers, proceed to the directions following Question No. 5.

QUESTION NO. 5: *(Qualified Immunity)* For each defendant officer to which you answered "Yes" in Question No. 4, do you find that a reasonable officer in that officer's position could reasonably have believed at the time he acted that his actions were lawful?

	Yes	No
Darin Muehler	___	___
Robert Brill	___	___
Vincent Allegra	___	___
William Lappin	___	___

If you answered "No" to Question No. 1, Question No. 2, and Question No. 4, as to all officers, please sign and return this verdict form to the court.

If you answered "Yes" as to any defendant officer(s) in response to Question No. 1, Question No. 2 or Question No. 4, but also answered "Yes" as to that same defendant officer(s) in response to Question No. 3 or Question No. 5, please sign and return this verdict form to the court.

If you answered "Yes" as to any officer in either Question No. 1, Question No. 2, or Question No. 4, but answered "No" as to that same defendant officer(s) in response to Question No. 3 or Question No. 5, please answer Question No. 6.

QUESTION NO. 6: State the total amount of damages, if any, that you award each plaintiff for each of his or her claims. Please note that under the Court's instruction, if you have found that plaintiff suffered no actual damage, you must award him or her nominal damages in an amount not to exceed One Dollar ($1.00).

Cause of Action	Amount Awarded
1. Civil Rights Violation—search warrant execution	
Iris Mena	$_____
Jose Mena	$_____
2. Civil Rights Violation detention of Iris Mena	$_____

Please sign and return this verdict form to the Court.

DATED: _____

_____

Foreperson

IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CASE NO. CV 98-8512-AHM

IRIS MENA, *et al.*,
Plaintiffs,

-v-

CITY OF SIMI VALLEY, *et al.*,
Defendants.

THE HONORABLE A. HOWARD MATZ,
JUDGE PRESIDING

REPORTER'S TRANSCRIPT OF PROCEEDINGS
LOS ANGELES, CALIFORNIA
TUESDAY, JUNE 12, 2001

LYNNE SMITH
OFFICIAL COURT REPORTER
UNITED STATES DISTRICT COURT
312 NORTH SPRING STREET
LOS ANGELES, CALIFORNIA 90012

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[3] INDEX TO WITNESSES

WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS
William Lappin				
By Mr. Muller	99			
By Mr. Muller		132		

* * * *

[95] [THE COURT:] give each of you your own copy of Court Exhibit 1. And because it's the necessary way for me to do it, I'm going to read into the record the facts that are written down on this court exhibit. It's not a plaintiff's exhibit and it's not a defendant's exhibit. It's an exhibit that I caused to be marked. These are facts which you are instructed and I am now instructing you to accept as proven. Whichever way they cut and whichever side wants to rely on them and in some respects maybe both sides will, they are deemed to be proven. So there's not an issue as to what these facts are.

Some of the evidence that you hear may relate very directly to these facts and may explain additional information about these facts or how they came to happen or why. But the facts are now established as proved. Here's what those facts are.

A. At all times relevant to this action, Darin Muehler and Robert Brill were employed as police officers by the Simi Valley police department—that will be known as SVPD—and they were assigned to the gang unit of the special problem section of the department.

B. On January 13th, 1998, Officers Muehler and Brill responded to a gang-related drive-by shooting in Simi Valley involving two rival gangs and were assigned as the investigating officers for the shooting.

C. During the course of their investigation, Officers [96] Muehler and Brill obtained information that the primary suspect in the shooting was Raymond Romero, a known West Side Locals gang member. The officers learned that Romero was in possession of a .25 caliber handgun used in the shooting along with ammunition for that gun and for a .22 caliber handgun.

D. The officers learned that Raymond Romero was living in what was termed a poor house at 1363 Patricia Avenue and that another known West Side Locals gang member, Janero Gonzales, Jr., also had lived at that address. A poor house

was described to the officers as a residence where a large number of people resided in a house designed for one family. The officers were also told there were people residing in campers in the rear yard.

E. The officers interviewed Raymond Romero's mother and brother who confirmed that he lived at the Patricia Avenue address and that he also stayed at his mother's house at 2646 Cimmaron Avenue in Simi Valley.

F. On January 29th, 1998, Officer Muehler sought and obtained a search warrant for Raymond Romero's known addresses, 1363 Patricia Avenue and 2646 Cimmaron Avenue.

G. The search warrant was a valid search warrant.

H. On February 3rd, 1998, members of the Simi Valley police department conducted a simultaneous service and execution of the search warrant on the two locations listed in the warrant.

[97] I. Plaintiff Jose Mena was the owner of the home at 1363 Patricia Avenue. He was not present at the house during the service and execution of the search warrant on February 3rd, 1998.

J. Plaintiff Iris Mena, the adult daughter of Jose Mena, was a resident of 1363 Patricia Avenue and was present at that residence at all times during the warrant service and execution on February 3rd, 1998.

K. Three other tenants who rented and lived in a mother home and two vans in the back yard of the residence were also present during the warrant service and execution.

L. The warrant service and execution began at approximately 7:00 o'clock a.m. It was raining. Sometimes quite heavily throughout the completion of the execution. The six-person special weapons and tactics team headed by Detective William Lappin made the initial entry into the house. Once

the house was secured, the SWAT team left and Officer Muehler directed the search of the house.

M. Officers arrested Raymond Romero for possession of a small quantity of marijuana at the 2646 Cimmaron Avenue address on the date the search warrant was issued. What was served. They issued him a citation and they released him at the scene.

N. The actual cash value of the damage done to the interior of the residence at 1363 Patricia Avenue during the

* * * *

[114] go to work.

THE COURT: We know that members of this jury won't be asleep at 7:00 o'clock.

(LAUGHTER)

BY MR. MULLER:

Q. But you understood when you were there at the front door that some people are sleeping at 7:00.

A. I absolutely had no idea. I didn't make a judgment one way or the other then. That thought did not enter my mind at the front door.

Q. What happened after you decided to order the entry into the house?

A. A ram was used on the door and forced. The door went open with I believe one strike of the ram forcing the front door open. One pair of officers entered and turned to the left holding on the kitchen area. Myself and another officer entered turning to the right towards the first bedroom inside the door. And the second pair went straight through towards the rear hallway.

Q. So on that initial entry with just one strike with the ram, there wasn't a lot of noise on the initial entry; is that right?

A. It was one strike but that's a lot of noise.

Q. There wasn't pounding though repeatedly with the ram to get in.

[115] A. No.

Q. All right. What did you do once you got into the home?

A. Once I was inside the residence, I had to turn to my right to enter a bedroom that was immediately inside the front door off to the right. And myself and another officer entered that bedroom.

Q. All right. And what did you see when you got into that bedroom?

A. We entered that bedroom and there was a bed off to our, slightly to the left towards the east wall and it appeared that somebody was in the bed. There were things stacked on the far right wall by the window. Things stacked on the west wall. And at that time we were announcing ourselves and speaking to the subject we saw in the bed.

Q. And you determined at some point in time that that was a female in the bed?

A. Yes.

Q. Now, when you first came in, did this person appear to be sleep?

A. It was hard to say. I don't remember if I saw her eyes open or if they were open when I came in. I can't remember.

Q. All right. You remember that you had your deposition taken back on January 1st, 1999?

A. Yes.

Q. And we discussed that whether the person was asleep or [116] not?

A. We may have. I've recently reviewed it. Yes, we did.

Q. And isn't it true that you believed that the person was asleep when you first came into that bedroom, the female?

A. If that's what I said two years ago, that's what I believed two years ago.

Q. And your memory was much better of this incident two years ago than it is today.

A. Probably.

Q. And back in your, when you gave your deposition, you understood that that deposition was under oath.

A. Yes.

Q. And you understood that that deposition testimony you gave could be used at this trial here.

A. Yes.

Q. So isn't it true that when you first entered that bedroom, you saw someone asleep in bed?

MR. NYE: Objection; it's been asked and answered, Your Honor.

THE COURT: Overruled.

THE WITNESS: I believe I saw somebody in that bed that was possibly asleep. I believed at that time may have been asleep.

BY MR. MULLER:

Q. And that's because when you came in that person had the [117] appearance of someone just woken up. They got up and kind of looked around startled?

A. Yes.

Q. What did you do after you saw this person who appeared to be asleep look up at you startled?

A. As I said, we were identifying ourselves when we entered the room stating who we were. We ordered her to roll over in the bed. And I can't remember if she rolled over on her own volition or whether we rolled her over. Once we rolled her over, we put handcuffs on her.

Q. And when you first entered, you were pointing your MP-5 machine gun at her?

A. Yes.

Q. Who entered with you; it was two people, right?

A. Yes.

Q. Who entered with you?

A. That was Officer Dominick.

Q. And did he also have an MP-5 machine gun?

A. I believe he did.

Q. And was he also pointing his gun at that person in the bed?

A. Yes.

Q. And can you explain to the jury what kind of outfit you wear when you're doing a SWAT warrant service.

THE COURT: Just reframe the question. I will ask the [118] question. Tell us what you were wearing then on that occasion on that morning in that room, please.

THE WITNESS: We were wearing green police uniforms which are basically a utility, uniform, military type of utility tilt covered with an entry vest which is black, a ballistic vest. On the left-hand side of the pocket, above the pocket we have a badge and we also have the word police on the vest on the front. We were wearing baloclavas which are things that conceal the features of our face, helmets and goggles, and carrying MP-5 submachine guns.

BY MR. MULLER:

Q. All right. What did you do after you possibly rolled this woman over and put handcuffs on her?

A. We checked the room for any other occupants and then I left the room.

Q. Now, the woman that you rolled over or possibly rolled over and put handcuffs on, that was Iris Mena; is that right?

A. That's what I have been told.

Q. You learned that since the search.

A. Yes.

Q. And when you went into the room, did Ms. Mena present any threat to you in any way, did she do anything threatening rather?

A. At that time, no.

Q. And did she completely cooperate with you?

[119] A. As far my memory goes, I believe she did. I don't believe any force was necessary. We didn't use any force on her.

Q. Other than rolling her over possibly?

A. Yes.

Q. And the point you had her rolled over you had her face down on her bed?

A. Yes.

Q. After you checked for other suspects, what did you do with Iris Mena?

A. Left her right there on the bed.

Q. And why did you leave her on the bed?

A. I left Officer Dominick in the room at the door when I left the room. And the easiest place to keep her secured and know where she was at was there where she was at.

Q. Now, how did you get into Iris Mena's room?

A. Through the bedroom door.

Q. And how were you able to get in through the bedroom door?

A. I don't remember if we forced that door or not. I know that the door was closed and we went through it.

Q. And by "we," who do you mean?

A. Myself and Officer Dominick.

Q. So you don't remember whether or not you broke open that door?

A. I don't remember that.

* * * *

[132] as they could to store their things.

A. I suppose, yes.

Q. Well, that's what it appeared at least. And what about the overall condition of the house, did you consider the house messy?

A. The house was basically the same. It was cluttered in places, sparsely furnished but it wasn't messy, what I considered a mess.

MR. MULLER: I don't have any further questions.

THE COURT: Okay. Go ahead.

CROSS-EXAMINATION

BY MR. NYE:

Q. Good afternoon, Detective Lappin. How are you?

A. Good afternoon. I'm fine.

Q. Good. Detective, how long were you in the residence at 1363 Patricia from the time that you entered to the time that you left?

A. About five minutes.

Q. And your function there was to do what?

A. To monitor the entry team entering the residence and direct their movements.

Q. And the entry team's function was to do what?

A. To clear the residence searching for anybody that might be in there to pose a threat to a search team.

Q. All right. And can you explain to the jury what you mean [133] when you say "clear a residence."

A. Basically our responsibility at that time was to make sure that every place that a person could be concealed or might conceal themselves in some manner was cleared to make sure there were no people there so that a search team could come in safely and conduct their search for evidence.

Q. And why is a SWAT team used to clear a residence such as this?

A. The reason a SWAT team would be used on this residence or that we were used was the high probability that a subject that was a member of a gang and involved in two attempt murders and maybe gang associates in the residence with him were there and possibly armed, that this was a situation that would require action that would basically put down any possible resistance and therefore ensure the safety of the police and the subjects in the residence.

Q. Did you consider this entry into this particular residence to be a high risk entry?

A. Yes.

Q. Why was that?

A. Because of the information we received before the service of the search warrant.

Q. And what information was that?

A. That the search was, the search warrant had been issued and was being conducted because the subject they were looking [134] for was a suspect in attempted murder, was armed. They believed that this subject would be at that residence, that There was a high number of people that would be there with him and other gang associates would be among those people.

Q. All right. Let me go back and talk a little bit about your background and history with the department. You said you were with the department for 15 years?

A. Yes.

Q. And before that, what did you do?

A. I was in the Marine Corps.

Q. And what is your current assignment with the department at this time?

A. Narcotics detective.

Q. Now, if I understand it correctly, the SWAT team is broken down into two sub teams; is that correct?

A. Yes.

Q. And what are those designations?

A. Blue and gold.

Q. And which SWAT team was used for this particular entry on this particular day?

A. The blue team.

Q. And who made the decision to use just one SWAT team as opposed to using the entire SWAT team?

A. That decision is made by the team commander.

MR. NYE: Your Honor, at this—

* * * *

IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CASE NO. CV 98-8512-AHM

IRIS MENA, *et al.*,
Plaintiffs,

-v-

CITY OF SIMI VALLEY, *et al.*,
Defendants.

THE HONORABLE A. HOWARD MATZ,
JUDGE PRESIDING

REPORTER'S TRANSCRIPT OF PROCEEDINGS
LOS ANGELES, CALIFORNIA
WEDNESDAY, JUNE 13, 2001

LYNNE SMITH
OFFICIAL COURT REPORTER
UNITED STATES DISTRICT COURT
312 NORTH SPRING STREET
LOS ANGELES, CALIFORNIA 90012

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[4] THE COURT: Good morning.

(JURY PRESENT)

THE COURT: Welcome back, ladies and gentlemen. We're about to resume.

WILLIAM LAPPIN, RESUMED

THE COURT: Let me remind you that you previously were sworn and you have the obligation to testify truthfully. Do you understand that?

THE WITNESS: Yes, Your Honor.

THE COURT: You may proceed.

MR. NYE: Thank you, Your Honor.

CROSS-EXAMINATION, CONTINUED

BY MR. NYE:

Q. Good morning, Detective Lappin.

A. Good morning.

Q. When we left off yesterday, we were just about to start using a diagram. Before we get to that, I'd like to ask you a few more questions. Are there certain conditions that have to be met before SWAT entry is utilized?

A. Yes.

Q. And what are those conditions generally?

A. Generally the conditions are that the situation is going to involve more hazards than are likely to be handled in a usual [5] manner by patrol. You have subjects in a residence that are armed and dangerous. You know there's a possibility of weapons in the residence. You know there's a possibility of encountering possibly multiple suspects resisting violently.

Q. And based upon the information that was available to you before this particular entry at 1363 Patricia Avenue, were those conditions met?

A. Yes.

Q. Can you tell the jury, please, what was done in preparation for this entry.

A. As stated before, I met with Officer Muehler and Officer Brill and over a period of a week and a half to two weeks we met on a daily basis looking at photographs and diagrams that we produced of the residence. Detective Muehler at that time advised me of what the crime was that had occurred, what they were investigating. I then got with the SWAT team and prior to service of the warrant we went out to a parking lot behind the station and basically taped out a diagram of the residence on the parking lot and practiced our entries and movement through that diagram.

Q. And this tape-out, was that done according to the diagram that was prepared by Officer Muehler and Officer Brill?

A. Yes.

Q. And did that diagram prove to be accurate once you were inside the house?

* * * *

[47] before the search you were out there with Officer Muehler and Officer Allegra, correct?

A. Officer Allegra and I responded. We were the first two officers there. We got into a confrontation.

MR. MULLER: Move to strike after—

THE COURT: Okay.

MR. MULLER:—he responded.

THE COURT: That motion is granted. The reference to a confrontation is stricken. You may proceed.

BY MR. MULLER:

Q. Now, isn't it true that Officer Muehler also was out there four months before the search?

THE COURT: He told you he didn't know. You're belaboring the point.

MR. MULLER: Okay.

THE COURT: There's not an issue in the case about whether Muehler was there. So you don't have to waste time establishing that.

MR. MULLER: Thank you, Your Honor.

BY MR. MULLER:

Q. Now, you talked about a confrontation out at the house; is that right?

A. Yes.

Q. And were some of the people at the house unfriendly towards you?

[48] A. Very unfriendly.

Q. Also unfriendly towards Officer Allegra?

A. Yes.

Q. Did that anger you?

A. No. It was unpleasant but it didn't anger me.

Q. And when you were out at the house four months before, did you see anybody who met any of the criteria for gang membership?

A. Not that I recall.

Q. And you've been trained what the criteria are for gang membership, what to look for?

A. Yes.

Q. In fact, one of the people that you encountered was a middle-aged gentlemen?

A. Yes.

Q. And he didn't fit any of the criteria for gang membership.

A. Not that I recall.

Q. And there were several other people there, females, a couple of women and three or four men?

A. I believe so.

Q. And none of those people fit the criteria for gang membership.

A. Not that I recall.

MR. MULLER: I don't have any further questions.

* * * *

[50] Q. Okay. Do you have a background in speaking Spanish?

A. Yes.

Q. And tell us about that briefly.

A. I attended the U.S. Border Patrol Academy back in '88. Graduated that. I have attended several college classes and I have tested for college credits for Spanish.

Q. Do you speak Spanish fluently?

A. I don't think I do.

Q. Let's go back to this domestic violence call that Mr. Muller was talking to you about. That was about four or five months before you went to execute the warrant on Patricia Avenue?

A. Yes.

Q. And the nature of that call was what?

MR. MULLER: I'm going to object; Evidence Code 402 and also not relevant.

THE COURT: Overruled. But clarify the question of nature of the call. We're not going to go into extensive discussion about what happened or why. But I do think you have a right to establish how it happened when he got out there.

MR. NYE: Thank you, Your Honor.

BY MR. NYE:

Q. What was your, what assignment were you given with respect to that address four or five months ago?

A. I believe it was a 911 disconnect with a family dispute.

[51] Q. And did you respond to the call?

A. Yes.

Q. When you responded to the call, who were you met by?

A. A female. I believe it was out near the front door or just out on the front lawn I believe.

Q. And did she identify herself to you?

A. Yes.

Q. Who was she?

A. I don't recall her name. She said she was the wife of Mr. Mena.

Q. And did she explain to you what had transpired before you arrived?

MR. MULLER: Objection under 402, Your Honor.

THE COURT: Sustained.

BY MR. NYE:

Q. In addition to this lady who identified herself to you as the wife of Mr. Mena, were there other people present?

A. Yes.

Q. How many?

A. Maybe four others.

Q. Males and females?

A. I believe there might have been one more female there and at least three males.

Q. And where were these other people located? And you can refer to the diagram if that helps you.

[52] THE COURT: the diagram being Exhibit 61?

MR. NYE: Yes, Your Honor.

THE WITNESS: Three of them were sitting at a dining table or actually where it says dining room. There was a dining table there. They were all sitting around that table. And I believe Mr. Mena was somewhere in the living room maybe near the front door when I first contacted him.

BY MR. NYE:

Q. All right. Now, you said there was a confrontation that day?

A. Yes.

Q. And who was that confrontation with?

A. Mr. Mena and Officer Allegra had a confrontation with the other three.

Q. And what was the nature of your confrontation with Mr. Mena?

A. After I determined the facts of the spousal abuse, I was going to arrest Mr. Mena. I turned to him around and handcuffed him. He became resistive, kept spinning around, wouldn't comply. I finally had to force him onto the couch

which is where, I think where it says my name, Lamb and Ahlvers. There was couch there. I forced him onto the couch to handcuff him. As I was doing that, the another three males that were at the table started coming towards me and now Officer Allegra had to physically stand between us and them to keep them back.

* * * *

[83] the SWAT team that did the entry and cleared the house.

A. You mentioned chain of command. Are you speaking of hierarchy of actual responsibility of the supervisory level all the way down to the line officer?

Q. Sure.

A. Okay. We had Lieutenant Thomas is obviously the SWAT commander and he would have basically functional command over the entire operation. He also shares that role as the commanding officer of the special operations unit which is where the gang unit falls under. So he wears two hats really in that same incident.

Beneath him we had Sergeant Wilcox and Sergeant Chambers supervising the SWAT aspect of it.

Then when it gets down to the actual search, separate from the clearing of the house by the SWAT team, now once the clearing is done, now we have the actual search of the house. That's going to be done by the investigating officers of the case.

Q. You say that's going to be done. What you mean is that the investigating officer of the case is in charge of the search.

A. And that would in this case be Officer Muehler and myself would ultimately help orchestrate the search of the house.

Q. I'm not sure you responded directly. What I wanted to get out of you was Officer Muehler was the person in charge of [84] supervising the search.

A. Supervision may not be the best word. It's certainly overseeing. He did not have disciplinary responsibility or anything like that. That would still rest with the sergeant or above. But as far as orchestrating how the search was conducted, what should be searched next, those are all things that Officer Muehler or myself were to coordinate.

Q. Well, wasn't Officer Muehler the supervisor at the field level?

A. He's still an officer so I don't—our department does not have officers take the role of a supervisor. So maybe we're in a war of semantics. He wasn't technically a supervisor.

Q. Okay. But he was in charge of the search.

A. In a sense, yes. He and I were orchestrating that search.

Q. You and he made the decisions about where the search was conducting, what rooms were searched?

A. Correct.

Q. Now, part of the investigation connecting Romero with the Menas' home was a telephone call made to the Mena home, right?

A. That's part of it, yes.

Q. Okay. Explain to the jury what you did in regards to the phone call.

A. Well, we took the information from the Romero brother and mother regarding the color of the house, the location

* * * *

[88] Q. Did Anthony Romero describe Patricia Avenue—Anthony Romero didn't tell you that Raymond lived in a trailer or a camper, did he?

A. I don't think he said either way which portion of the property he lived in. If you'd like, I can refer to that report again. It's not in front of me now. Someone had changed the report here.

Q. The primary reason that SWAT was used on this warrant was because of Raymond Romero, correct?

A. The reason SWAT was used is that Ray Romero was suspected in being involved in a drive-by shooting. He was a gang member. He had exhibited a propensity for violence by discharging a handgun. The information that we had indicated he was a violent felon. The information we had is that another gang member may have lived there. Those were all things that went into our formulation of using the SWAT team for our safety.

Q. Would it be correct to say though that the primary reason that SWAT was used at Patricia Avenue was because of Raymond Romero?

A. Yes.

Q. Was there any surveillance done of Raymond Romero the day before the search warrant was served to see whether he was at Patricia Avenue or at his family home on Cimmaron Street?

A. I don't recall any specific surveillance the day before looking for Raymond Romero.

* * * *

[91] Q. 61A, is this what you're talking about, the rear of the garage that is in the upper right-hand corner of 61A?

A. Correct.

Q. And what were your duties in regards to this garage?

A. I was assigned with two other officers, it would have been Officer Adamzak and Officer Hodges, to make basically a simultaneous entry into that rear garage. Prior to making an entry, we were to give adequate knock and notice and our entry and knock and notice would be timed with the SWAT team. We were not to go in any earlier or any later but at the same time. And there are tactical reasons for that.

Q. Was the door to this garage in 61A, was that padlocked?

A. I don't recall it being padlocked now. I think it was just a lock.

Q. Did you try the knob?
A. Go ahead.
Q. I thought I cut you off.
A. You may have. What was your question?
Q. Did you try the knob on 61A?
A. I don't think we tried the knob prior to—we did our knock and notice but I don't think we tried the knob, no.
Q. So you just used the ram on 61A?
A. As I recall, we did, yes.
Q. And you caused damage to that door?
A. Yes.

* * * *

[94] THE WITNESS: Yes, sir.

THE COURT: All right. Ask the question again, please.

BY MR. MULLER:

Q. Okay. I'd just like you to give the jury an idea as to what did you in regards to the entry other than breaking into the unlocked door of that converted garage.

A. We provided knock and notice in English and Spanish and then we made our entry. And that was coordinated with the team in the front because I could hear the knock and notice start at the front.

Q. Okay. What did you do after the entry to that garage?
A. We waited in the garage.
Q. Why were you waiting in the garage?
A. The tactical plan was to include the SWAT team to clear out the interior of the residence. We were to wait in the garage until they gave a clear signal so we knew that it was safe to exit.
Q. What time did you all arrive at Patricia Avenue?
A. I think arrival was sometime between 6:30 and 7:00. I still can't recall exactly what time specifically.
Q. So between 6:30 and 7:00, not right at 7:00?

A. I don't recall it being any time but sometime in there. Our search warrant is authorized for 7:00 o'clock so it would have been sometime prior to 7:00 o'clock.
Q. Wasn't it your best estimate that you arrived between

* * * *

[96] Q. All right. Let me pull back a little bit. In regards to the search, what were your general duties?
A. My job was to recover evidence that was located during the searching process.
Q. Did you have any duties in regards to where the officers searched?
A. I think I helped assign officers to areas so we knew that those areas were covered.
Q. How many officers did you have searching the Mena home?
A. The interior, looking at the diagram, I think we had two, four, well, five or six maybe.
Q. At some point in time after SWAT cleared the home, did you do a walk-through?
A. Well, I'm sure we did. I don't remember exactly how that went. But yeah, I'm sure we walked through to see what basically was there.
Q. Was that before you made any assignments on the search?
A. Yes. Because I had to know what areas to assign.
Q. Now, someone was sent in to video tape before you did your search.
A. That's correct.
Q. That would be Rebecca McConnell.
A. That's correct?
Q. And she's not a police officer, right?
A. She's our crime scene investigator.
[97] Q. Do you know if she went in to video tape before or after you did the walk-through?
A. I don't know if it was before or after the walk-through. I just know she video taped before we searched.

Q. Okay. I would like to now go to Exhibit—

THE COURT: I'd like to ask a question.

MR. MULLER:—Exhibit 51.

THE COURT: Excuse me. I'd like to ask a question about your last answer. You said she videoed the premises before your search and you're not sure if it was before the walk-through; is that correct?

THE WITNESS: Correct.

THE COURT: What's the difference between the search and the walk-through?

THE WITNESS: As I understood his question on the walk-through is that once the SWAT team cleared it, we had now a house that we didn't have any other people and it didn't need to be searched. So that point between when the SWAT team actually stopped searching and the point that we started assigning, we walked through to determine what was there to be searched.

As an example, one of the middle bedrooms on the north side of the building didn't have any furniture in it so there was no need to assign someone to that room. So that would have been ascertained during the walk-through.

THE COURT: The walk-through was the first once-over.

* * * *

[105] you've drawn the distinction before about units and bedrooms. No, it did not strike me as being in contrast with our search warrant for the reasons that we outlined.

Q. I didn't ask you about the contents of your search warrant.

A. I understand.

Q. And we're still looking at Iris Mena's room. Do you see the doorway here, can you tell what that is?

A. It looks to be damaged, yes.

Q. Did you note that when you did your walk-through?

A. I don't know if—again, when you say "note," I don't think I took a physical note. But I think I was conscious of the damage that was done, yes.

Q. And right up here (indicating), does this appear to be a metal circle that one would put a padlock through?

A. You know, if you can roll the video tape, I will have a better idea. That could be. It's hard to tell from that.

Q. Okay.

THE COURT: Stop the video for a second. Please, both of you, don't talk when the other is talking. Don't interrupt his question. And you don't interrupt his answer. Now proceed.

BY MR. MULLER:

Q. Stopping on Iris Mena's room, in your whole investigation that led up to the search warrant service, you never developed one piece of evidence saying that Iris Mena was somehow related [106] to Mr. Romero's crime, did you?

A. That's correct, we did not.

Q. You didn't develop any information that Iris Mena was a gang member?

A. No, we did not.

Q. And certainly not her father?

A. Because I didn't know Iris Mena enough to know whether she had a significant roll in the investigation. But prior to this point, no.

Q. I'm not asking about what you did know I'm just asking you if you had any information at all that the Menas were related to Mr. Romero's crime in any way.

A. No.

Q. And did you have any information at all that the Menas were in Mr. Romero's gang?

A. I don't believe that they were, no. But I have no way of knowing that.

Q. Please. I'm just asking you if you had any information that any of the Menas were in Mr. Romero's gang.

A. I did not have information to that.

Q. All right. What are we looking at right here (indicating) ?

A. This looks like the vacant room.

Q. Now, do you know if that room was locked when SWAT made its entry?

* * * *

[116] Q. All right. Well, as you say, you may have, you may have told Hodges when you gave out the assignment that he was to search Ray Romero's room.

A. I may have. I just recall asking him to search that room. I don't recall specifically stating he's searching Romero's room at that point.

Q. Now, at some point, you would agree though that at some point soon after the search started, you identified that room positively as Romero's room.

A. Yes, at some point after the search started. Yes.

Q. At that point in time when you identified Romero's room soon after the search started, did you tell the searching officers not to search the other locked bedrooms?

A. No.

Q. Did you tell the officers not to continue their search through the unit occupied by the Menas?

A. No.

Q. At that time you had no information that the Menas were involved in the crime at all.

A. That's correct.

Q. And you had no information that the Menas had any gang associations or other criminal associations with Ray Romero.

A. I had no way of knowing that.

Q. You didn't know that.

A. I didn't know that.

* * * *

[119] mean, that's the best I can give you. I know it was sometime after they started searching. I don't recall specifically when he found the identification so I'm trying to give you the best ballpark I can. So it was sometime fairly quickly.

Q. It would be less than 20 minutes?

A. I'd say less than 30. More than 5, less than 30.

Q. And you would agree that this search took in the neighborhood of two hours?

A. An hour and 45 minutes, maybe two hours at the tops.

Q. Now, the search would have been shortened considerably if you had limited it to Raymond Romero's room and the common areas of the residence.

A. If we were only looking for things in his room, correct.

Q. I didn't say that. I said if you had limited the search to Raymond Romero's room and the common areas of the residence, it would have shortened the search considerably.

A. It would have shortened the search because there would have been less to search, yes.

Q. And you also assigned officers to search the trailers and mobile homes outside the property; is that right?

A. Correct.

Q. And you had them searching those homes, mobile homes and trailers after you had located Raymond Romero's room.

A. Well, simultaneous to. I think once the directions were given to people to search each room, it was done simultaneous.

* * * *

[121] Q. All right. After assigning the rooms, what was your duty or what did you do at the search location?

A. Once the room assignments were done, my job was to start recovering evidence.

Q. What did you do to recover the evidence?

A. I went from room to room and as people found them or they noted things that were significant, I made a determination to recover those items.

Q. All right. I would like to go back. Well, let me stop for a second. During the search, did you move around the property to supervise what the searching officers were doing?

A. I believe I did go from room to room at various points.

Q. Did you go out to the garage?

A. I maybe once or twice walked out there and walked back. But because my role is to recover evidence, there wasn't much evidence to recover in the garage. In fact, I don't think there was any. I don't think I spent much time out there.

Q. All right. I'd like to go back to the video. And we're now seeing the video that was taken after the search was done, correct?

A. Yes.

Q. And we're looking in Iris Mena's room?

A. Yes.

Q. The dresser there, that's the dresser that either you or your partner ordered broken into?

* * * *

[123] A. Correct.

Q. And very early on you were told about Ray Romero's I.D. being found in his room?

A. Yes.

Q. During the time that you were inventorying evidence, were you ever told that there was any evidence being found in the Mena room?

A. I don't think we found any evidence in the Mena room.

Q. Well, would you look at your inventory which is Exhibit 13 and refresh your recollection as to any evidence at all related to the crime as found in the Mena room.

THE COURT: Okay. Why are you asking him to look at 13?

MR. MULLER: To see if any evidence of the crime relating to or any evidence relating Ray Romero was found in the Menas' room.

THE COURT: Okay. Why don't you identify for the members of the jury what 13 is.

MR. MULLER: He's looking at it.

THE WITNESS: It does not look like any evidence was recovered from the Mena room.

BY MR. MULLER:

Q. Okay. And Exhibit 13 to backtrack, what is it?

A. This is our inventory of property taken during a search warrant.

* * * *

[126] Q. Well, was this video made after all the searching officers left?

A. There were people still present at 1363 Patricia when this was made. But I don't think any searching was done after it. In fact, I know no searching was done after the video was made. Although I don't know what clean-up was done after this video was made. For instance, she has the video camera sitting on top of the table there. I know that's the case that contains her video camera. She didn't just leave that behind.

Q. Okay.

A. So I don't know. I can't draw that conclusion.

Q. But the searching officers were gone when this video was made.

A. Like I said, I don't know who was present left at the facility. I can't say that they were gone like away from 1363 Patricia. They may have been completing whatever they were doing, that kind of thing, outside of the house. But there was no searching being done during this video and after this video.

Q. Okay. We're now looking at the breakfast nook leading to the kitchen and there's another pair of rubber gloves right there in the kitchen; is that correct?

A. It looks like it, yes.

Q. We're still in the kitchen here. Now, do you know if this—let me refer you to this closet here. Do you see a padlock on that door?

[127] A. It looks like there's a padlock there or some kind of a lock.

Q. And do you see that that's broken?

A. Yes.

Q. Did you anybody ask Iris Mena for the keys to that padlock before it was broken into?

A. I don't know. I'm not sure who broke that.

Q. That would have been one of the searching officers, correct?

A. Perhaps, yes.

Q. No one found anybody was hiding in a kitchen cupboard, did they?

A. No, there would not have been a SWAT clearing, correct.

Q. Did you have any concerns that that padlock was broken?

A. Well, I believe that the search warrant specified all locked containers. So that would be consistent with following the directions of the search warrant.

Q. And if you had keys, if someone gave you keys, you could have done that too, you could have opened that.

A. It's possible. But I know she didn't have the combination to one of the locks. I don't know if they had asked her that.

Q. Did you ask her about the keys?

A. I didn't ask her because, again, I don't know who had broken that so I don't know.

* * * *

[130] Q. That was the end of the search video. Let me back it up just to note the time. So this video was completed about 8:57 a.m., correct?

A. Yes, it looks like that was the time.

THE COURT: What exhibit number is the video?

MR. MULLER: It is 31—51, excuse me. 51.

BY MR. MULLER:

Q. You went out into the garage during the search several times, correct?

A. I don't know about several times. I was there a couple of times.

Q. Did you see Iris Mena out there in the garage?

A. I remember seeing people on the bed, sitting on the bed. At that point I didn't know who Iris Mena was so I—but like I said, I saw a female sitting on the bed.

Q. Did you see a young woman sitting on the bed?

A. The person who appears in court today, it looks like the video and that would be the person I saw.

Q. And you saw that she was completely cooperative, didn't you?

A. Yes.

Q. She wasn't causing any problems at all?

A. She didn't appear to be, no.

Q. And each time you went out in the garage, you saw that she was completely cooperative.

[131] A. I don't remember anything other than cooperative, yes.

Q. And each time you saw her, she had her hands handcuffed behind her back.

A. I believe so, yes.

Q. And you had the authority as the investigating officer, one of the investigating officers, to have Ms. Mena released; isn't that right?

A. Released from the scene or just released from the handcuffs?

Q. Well, let's start with the handcuffs. As the investigating—

A. I could have made both those decisions, yes.

Q. All right. So you could have had the handcuffs taken off her and you could have allowed her to leave the scene.

A. Correct.

Q. And you never did so.

A. Not until we finished our search, correct.

Q. So you left her for the entire time sitting handcuffed on that bed.

A. Correct.

Q. Now I want to refer you to Exhibit 12—I'm sorry. I want to refer you to Exhibit 11, Page 5. Are you there?

A. Yes.

Q. And does Exhibit 11 discuss what's supposed to be done with people who are found at the residence?

[132] A. It notes additional information. Let's see. Yes, it does.

Q. What does it state?

A. Any subjects encountered will be handcuffed and detained, until they can be patted down, their location noted, FI and released by Officer Muehler or Officer Brill.

Q. I'm also going to put up 11A which is a blowup.

THE COURT: What page was that from Exhibit 11?

MR. MULLER: That was page—

THE WITNESS: 5. It was Page 5.

BY MR. MULLER:

Q. So this was a tactical plan of how the search was supposed to go. It was prepared by Officer Muehler.

A. That's one page of it, yes.

Q. That's one page of it. And you had input into this plan.

A. Yes. I had some input, yes.

Q. You knew what was in the plan.

A. Correct.

Q. And it says that any subjects, any people in the house encountered will be handcuffed and detained.

A. Correct.

Q. And they would be patted down, correct?

A. Yes.

Q. And patting down someone is something you do almost immediately after handcuffing them or soon after handcuffing [133] them?

A. Yes.

Q. You want to make sure they're not armed?

A. Correct.

Q. Their location noted, that could be done very easily. That would be what bedroom—in the case of Iris Mena, it would be what bedroom she came from?

A. Correct.

Q. FI, now what is FI?

A. Complete a field identification card.

Q. And what is a field identification card?

A. I think it was—it's a card fire departments, about a three-by-five card. On one side it contains their name and information basically consistent with what a driver's license contains. On the backside it may have clothing, where they were born, basic information about the individual.

Q. So all this should take about two, three, five minutes?

A. Completing the information on the card, correct, it take very long.

Q. I'm talking about the patting down, their location noted and the FI card completed.

A. That would go very quickly, yes.

Q. About three to five minutes?

A. Yes.

Q. Now, this plan wasn't followed though, was it, in terms [134] of Iris Mena?

A. I disagree with that statement.

Q. Well, she was held handcuffed for approximately two hours, two to three hours, wasn't she?

A. Yes, she was.

Q. So the plan wasn't followed, was it?

A. The way I read the plan and I read it today is that at some point they will be released. It doesn't state in the plan when they will be released.

Q. Well, according to the plan, all that was needed to be done with the subject or the person that was found in the residence was to pat them down, note their location and do a field interview; is that right?

A. That was mentioned in the plan, yes.

Q. There was an officer who was stationed in the garage with Iris Mena for the whole two to three hours that she was sitting there handcuffed.

A. Two to three hours?

Q. Two to three hours.

A. I don't think she was handcuffed close to three hours at all. I think it was at most two hours.

Q. Okay. So you're saying two hours. For the two hours that she was handcuffed, there was an officer stationed with her in the garage.

A. The entire time she was handcuffed, yes.

[135] Q. And that officer could have at any time completed a field identification card of Iris Mena.

A. Correct.

Q Now, even if you didn't want to release Iris Mena pursuant to your plan, you could have taken her handcuffs off, right?

A. That argument could be made but I chose not to.

Q. And you made that decision despite the fact that she was completely cooperative and did not exhibit any hostile tendencies or hostile behavior towards you.

A. Correct.

Q. And referring to the field identification card that was supposed to be filled out, no one even bothered to do a field identification card of Iris Mena, did they?

A. I was under the impression one was done.

Q. Have you ever seen a field identification card relating to Iris Mena?

A. I understand in preparing for testimony today that one apparently never got inputted in the computer and none was found in records. But my impression at the scene was that one was done.

THE COURT: You know, I thought the question was in plain English. Have you ever seen. Now, it seems to me if that was the question, you could say yes, no or I don't know. You ask the question again. Okay? And you respond to the question [136] as framed.

THE WITNESS: Yes, Your Honor.

THE COURT: You're allowed to give speeches when I and your lawyer elicit additional information.

BY MR. MULLER:

Q. Have you ever seen a field identification card regarding Iris Mena?

A. No.

Q. How long after the search was completed was it until Iris Mena was released?

A. I would say very soon after the search was completed.

Q. But not immediately after the search was completed, right?

A. I don't see any reason why we would have kept her longer than the search being completed.

Q. Well, did you keep her about 10 to 15 minutes after the search was done?

A. It's possible. I don't recall.

Q. You kept her until after the video was made, correct?
A. I believe so.
Q. And when I talk about the video, I'm talking about the second video that was done at 8:50.
A. Correct.
Q. Well, ended at 8:57.

And isn't it your memory that about 10 to 15 minutes [137] after that Iris Mena was released?

A. That would sound consistent.
Q. And at any time did you ask Iris Mena any questions about the crime that Ray Romero was accused of?
A. I don't believe so.
Q. Do you know if anybody did?
A. I don't know.
Q. You were one of the investigating officers. Isn't that something you would know?
A. I don't think anybody did. But I don't know for sure if anyone did.
Q. You don't think anybody did.
A. No. I said I don't think anybody did.
Q. And that was because Iris Mena was not a suspect at all in this crime, correct?
A. That's correct.
Q. And there was no belief that Iris Mena had any relation to Ray Romero other than the fact that he rented a room in her father's house; is that right?
A. I don't know what her full relationship was.
Q. That's what I'm saying, you didn't have any evidence that the relationship between Iris Mena and Ray Romero was anything other than the fact that he rented a room from her father.
A. That's correct.

MR. MULLER: One second, Your Honor. I think I'm done.

[138] BY MR. MULLER:

Q. Did you ever explain to Iris Mena why you were there?
A. I believe my partner did at some point. I don't think I did.
Q. And you went out to the garage several times.
A. Correct.
Q. Did you ever show Iris Mena a search warrant when you went out to the garage?
A. I don't think at that point I did.
Q. Did you care if she knew why she was dragged out of her bed at gunpoint, handcuffed and taken to this garage for over two hours?
A. Yes, I did care about that.
Q. Well, did you want to explain to her why you were doing it?
A. I think we did explain that to her at some point.
Q. But not until the search was completely over.
A. That's correct.

MR. MULLER: I have no further questions.

THE COURT: Okay. You may proceed.

MR. NYE: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. NYE.

Q. Good morning.
A. Good morning.

* * * *

[147] house prior.
Q. That would have been the house at 1363 Patricia?
A. Correct.
Q. We'll come back to that in just a moment.

You had information provided to you that a Janero Gonzales also resided at 1363 Patricia at some point in time?

A. Yes.

MR. MULLER: Objection; leading.

THE COURT: Overruled. He's just laying a foundation.

MR. NYE: That's correct.

BY MR. NYE:

Q. And what specific information did you have in that regard?

A. From his family that Janero Gonzales had lived there.

Q. All right. And am I correct that you did not know whether he did or did not reside there in February of 1998?

A. Correct.

Q. Was that information of any significance to you?

A. Yes.

Q. What was that?

A. Well, the fact that we may encounter two gang members at the house furthered our concerns that this was a high risk search warrant.

Q. Now, you had been to 1363 Patricia Avenue on prior occasions, correct?

[148] A. Yes.

Q. How many times?

A. I believe it was two.

Q. And when in relation to the service of the search warrant were those two visits?

A. They were prior to.

Q. Can you give me your best estimate as to the time frame?

A. Well, I think we discussed the domestic violence incident. It was about four months. The other one I do not recall specifically.

Q. Do you recall what kind of an incident that was?

A. It was a stabbing.

Q. All right. We'll refer to one as the domestic violence incident and the other as a stabbing incident so that we can distinguish the two.

On the domestic violence incident, what was your role?

A. I was just one of the backing officers.

Q. Do you recall whether you went inside the house that day or not?

A. I don't think we even went inside.

THE COURT: Excuse me one second, please. Sir, are you expected to be a witness in this case?

UNIDENTIFIED SPEAKER: No.

THE COURT: All right.

BY MR. NYE:

* * * *

[158] criminal activity, any newspaper clippings relating details of or referring to any crime or crimes of violence, any address books, lists of or single references to addresses, telephone numbers of persons who are determined to belong to or be affiliated with any street gangs.

Q. We know that this warrant was executed on February 3rd of 1998 and you've previously testified that you were involved in the decision to use SWAT for the entry team; is that correct?

A. Yes, I played a role in helping to determine that that was necessary.

Q. And just briefly can you tell us why you felt that you wanted SWAT to make the initial entry on this execution.

A. I believe we had a drive-by shooting that occurred so we had a member of a gang that was, had obviously demonstrated a propensity for violence, had used a firearm. We believed he still possessed a firearm and he lived potentially with another gang member in addition to the fact that on prior occasions we had responded to crimes of

violence at that house and specifically stabbings, domestic violence and other incidents. Those would raise our awareness to the point where we believe it's a high risk entry.

Q. Did you attend the briefing the morning before the service of the warrant?

A. The morning of the service? Yes.

Q. And were there other agencies involved other than the

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[168] returned.

Q. Now, we know that Iris Mena was detained throughout the period of the search; is that your understanding?

A. That's correct.

Q. And during that detention she was handcuffed, correct?

A. Yes.

Q. You were asked whether or not you released her and you told us no. Is there a reason why you didn't release her prior to the conclusion of the search?

A. Yes.

Q. Why is that?

A. A couple of reasons actually. The number one reason, although she appeared to be compliant, in my experience many times when people are in handcuffs they are compliant. However, we didn't know what her full motivation was or her involvement at the scene. Although I did not have any indication to believe that she was a gang member herself, I didn't know what kind of a supportive role she may play to the gang or whether or not she was involved in any way of associating with the gang members.

My feeling was that if I had unhandcuffed her at that point, the possibility would have arisen that she would have at some point inferred with our process. As an example, had she been friends with Mr. Romero and saw us recover something that could be somewhat damaging to him in the way of evidence,

she may try to run or interfere or get in the way of our search. [169] What that would necessitate is for us to now forcefully restrain her, placing her back on the bed or another position or possibly back in handcuffs.

That process might injure her. So my concern, especially as a supervisor now, although I wasn't a sergeant back then, the question I ask people that I supervise now is is there anything we could have done to prevent that potential damage from occurring or I should say the injury from occurring. And the hypothetical that I gave, had we injured her because we released her from handcuffs and had to restrain—

MR. MULLER: I'm going to object as non-responsive; narrative.

THE COURT: Overruled.

THE WITNESS: Had we injured her during that process and we could look back and say could we have avoided that injury by keeping her handcuffed in the first place, then yes, that's the best course of action. It prevents other problems from occurring.

BY MR. NYE:

Q. Is the handcuffing done in part for officer safety?

A. Absolutely.

Q. Is it done in part for the safety of the person handcuffed?

A. Yes.

Q. Did you ever consider releasing Iris Mena, sir?

[170] A. No.

Q. Now, you were required to document property that was seized; is that correct?

A. That's correct.

Q. And I believe that will be Exhibit 13 or perhaps 14. Let me check. Exhibit 13.

A. Yes.

Q. Do you recognize Exhibit 13?

A. Yes.

Q. And is that a true and accurate copy of your list of property seized during this particular search?

A. Yes, it is.

Q. Can you describe for us just briefly the property that was seized at 1363 Patricia Avenue.

A. Yes. We recovered notebooks containing miscellaneous gang writings, newspaper articles regarding the drive-by shooting that we were investigating, wallets containing I.D. or a wallet containing the I.D. of Ray Romero, .25 caliber bullets contained in a box that were recovered from Ray Romero's house—I'm sorry, from his room. A gang style T-shirt from his bedroom. A baseball bat that contains gang writing on the bat itself. A video depicting a gang lifestyle on the movie "American Me." A telephone containing gang writing scratched into it. A blow gun was in Ray Romero's room.

In the converted—that's not the diagram there—but [171] in the converted bedroom in the north part of the house, in the porch room there was a .22 caliber semi-automatic handgun that was recovered from there as well as .22 caliber rounds. Additional baseball bat containing gang writing and I believe it was recovered from the living room area or the common area. Fireworks, a ziplock baggie containing marijuana. And then the last two items are the 35 millimeter film for the photos that we see today as well as the video tape of the interior of the house.

Q. And those items were all recovered from the Patricia Street address; is that correct?

A. That's correct.

Q. Were you present when your partner Officer Muehler talked to Iris Mena at the conclusion?

A. I don't think I was.

Q. And your best estimate of the total time that Iris Mena was detained is what?

A. Anywhere from an hour and 45 minutes to two hours, somewhere in that time frame.

Q. Is that an unusually long period of time for a search of a residence such as this?

MR. MULLER: Objection; lacks foundation.

THE COURT: Sustained.

BY MR. NYE:

Q. Officer, have you been involved in the search of other

* * * *

[173] contained possibly in the boxes of clothing was very difficult.

Q. Did you see anybody do anything at all that you considered to be inappropriate care or treatment of Iris Mena?

A. No.

MR. NYE: That's all I have, Your Honor.

THE COURT: Thank you.

REDIRECT EXAMINATION

BY MR. MULLER:

Q. Sergeant Brill, I'm sorry about calling you Officer Brill.

Sergeant Brill, if I understand your testimony, you kept Iris Mena handcuffed for her own safety?

A. Well, yes.

Q. And you were also concerned about the safety of the officers?

A. That's correct.

Q. Iris Mena is a very small woman, 18-year-old old woman at the time. There were how many officers in the room there guarding her?

A. Two that I'm aware of most of the time.

Q. And did you really have a legitimate concern that Iris Mena was completely unarmed and completely cooperative was going to do something to the officers that was violent?

A. My concern was to prevent something from happening.

Q. Well, wasn't it really out of the realm of reasonable [174] possibility that Iris Mena was going to attack an officer?

A. It would seem unreasonable but people do unreasonable things. I'm not saying that she would do that. My concern is to prevent that from occurring. So you take steps so it never has the opportunity to occur.

Q. Well, isn't it your duty—

A. It's nothing personal.

Q. Isn't it your duty to assess the situation and act in a reasonable manner based on the facts that you see in front of you?

A. That's correct.

Q. And the facts that saw you in front of you were that this was a completely cooperative young, five-foot-two-inch woman who presented absolutely no hostility at all towards the police.

A. Was that a question?

Q. Weren't those the facts in front of you?

A. The facts were that—yes, those were the facts. However, my experience as a police officer also plays into my decision making. We don't work in a vacuum.

MR. MULLER: I would move to strike as non-responsive.

THE COURT: The second part of the answer is non-responsive. He responded to the first part fairly. So the second part about the reference to his experience as a police officer will be stricken. You can be questioned about that at the appropriate time if you want.

[175] THE WITNESS: Thank you.

BY MR. MULLER:

Q. And isn't it true that it's completely unnecessary to keep a cooperative person handcuffed during a search warrant service?

A. That's not true.

Q. Now, Lieutenant Thomas is the SWAT commander; is that correct?

A. Yes.

Q. He's very experienced in the service of search warrants?

A. He's experienced, yes.

Q. He was the supervisor on the scene?

A. Yes, he was.

Q. And so you would defer to his opinion about when it's necessary to handcuff someone or not, would you not?

A. Depending on the circumstances, yes.

Q. Well, would you defer to his opinion or not?

A. I can't say yes or no to that. It depends.

Q. So you may not, you might not defer to the opinion of Lieutenant Thomas who is the head of SWAT, who has many more years on the force than you do in certain circumstances?

MR. NYE: I'm going to object. That's an incomplete hypothetical.

THE COURT: Overruled.

THE WITNESS: What was the question then?

[176] BY MR. MULLER:

Q. Is what you're saying is that you would not, under certain circumstances you would not defer to Lieutenant Thomas in terms of whether it's necessary to keep a cooperative person handcuffed during a search warrant service?

A. I use my discretion. If I had a question about what I was doing, yes, I could ask for his opinion and to defer it for his judgment. But I believed what I was doing was correct. And had he believed what I was doing was incorrect, he could have corrected me and corrected the situation.

Q. Let me try the question again, just a short version of the question. You would defer—would you defer to Lieu-

tenant Thomas or not regarding the handcuffing or keeping a cooperative person handcuffed during a search?

A. Not necessarily, no.

Q. Okay. You said that the house was very messy and you made a comment how your house wouldn't be kept that way, right?

A. Correct.

Q. Did you feel better than the people who lived in that house?

A. Absolutely not.

MR. NYE: Objection; argumentative.

THE COURT: I just didn't get that. Repeat the question.

MR. MULLER: It was two questions. You just want the [177] last one?

THE COURT: Whatever the questions were to which there was an objection. I have to rule fairly and I didn't hear it.

MR. MULLER: Okay.

BY MR. MULLER:

Q. You testified that you felt the house was messy and you would never keep your house that way, correct?

A. Correct.

Q. Did you feel better than the people who lived in that house because of the way that house was kept?

MR. NYE: Which I objected to on the grounds it's argumentative.

THE COURT: Overruled.

THE WITNESS: Absolutely not.

BY MR. MULLER:

Q. Now, you said Romero could have hidden the gun anywhere.

A. Correct.

Q. And when you say anywhere, he could hidden it across the street, he could have hidden it in another house; is that right?

A. That's very true.

Q. But just because he could have hidden it in those places, without any evidence that the gun might be there, you would not search those places, would you?

A. Which places are you referring to?

Q. Across the street, in a house next door.

* * * *

[183] RECROSS-EXAMINATION

BY MR. NYE:

Q. You suggested you would like to justify your answer. Do so.

MR. MULLER: Objection.

THE WITNESS: If we're assuming a couple of things, when it was taken, assuming it's at the end of the search warrant, nothing that the items that were in the room to begin with, the number of items that needed to be searched through and the fact that our practice and in my experience as a police officer is that you don't return things to their original position, as ugly as it may look and I understand it's not easy, search warrants are inherently intrusive, yes, that would be consistent with what we'd have to do.

THE COURT: Is that it?

MR. NYE: Yes, Your Honor.

THE COURT: Okay. You're not going to ask more questions about that, are you?

MR. MULLER: No.

THE COURT: I have some questions, Sergeant.

THE WITNESS: Yes, Your Honor.

THE COURT: That concern the detention of Ms. Mena. You told counsel that there were two reasons why you didn't release her until the search was concluded. The first reason you said was that somebody who is totally cooperative, totally [184] compliant, when handcuffed may not be when the handcuffs are removed. That was the focus; is that correct?

THE WITNESS: That's correct.

THE COURT: And that would be you true for every single human being who was ever handcuffed, right?

THE WITNESS: Possibly, yes.

THE COURT: Okay. And the second reason you said was that if she had been released, maybe she would have done something that would have interfered with the search, correct?

THE WITNESS: Correct.

THE COURT: And that would be true of every single human being who could ever be handcuffed, right?

THE WITNESS: That's correct.

THE COURT: So tell us what circumstances, despite the fact that there could always be a risk that someone would no longer remain cooperative, that there would always be a risk that someone would interfere with the remaining work of the officers, under what circumstances if any would you ever conclude it was reasonable to remove the handcuffs?

THE WITNESS: I would limit it to a very few circumstances, number one being a pregnant woman or a person with a severe medical condition where it would actually endanger them for the purpose of being handcuffed, or that they were so elderly that the very nature of their existence would not pose any kind of threat to us at all. Off the top of my head, those [185] would be two examples of

certainly reasons why I would not handcuff somebody for that duration.

THE COURT: Did you ask Ms. Mena whether she was pregnant?

THE WITNESS: I did not ask her that, no.

THE COURT: Did you hear anyone else ask her whether she was pregnant?

THE WITNESS; I don't recall if that was asked.

THE COURT: Did you ask Ms. Mena whether she had any severe physical illness or medical injury?

THE WITNESS: I don't recall if that was asked of her and she—

THE COURT: Did you ask her?

THE WITNESS: No, I did not.

THE COURT: Did you hear anyone else ask her?

THE WITNESS: No.

THE COURT: Okay. And so the only third reason is severe age, right?

THE WITNESS: That would be another reason off the top of my head.

THE COURT: Okay. And if none of those reasons was present or you didn't bother to find out whether any of those reasons were present, it would be your practice no matter what the other circumstances to always keep the individual handcuffed throughout the entire duration of the search no matter how [186] cooperative or how compliant or how safe the circumstances were; is that correct?

THE WITNESS: In most cases, yes.

THE COURT: I have no further questions. Do you want to ask any questions in light of that?

MR. MULLER: No, Your Honor.

THE COURT: Do you?

MR. NYE: Just one question.

THE COURT: Go ahead.

FURTHER RECROSS-EXAMINATION

BY MR. NYE:

Q. How many people were handcuffed in the garage?
A. I believe four.

MR. NYE: Thank you.

THE COURT: All right. Thank you, Sergeant. You're excused.

Call your next witness, please.

MR. MULLER: Thank you, Your Honor. We call Arnold Baynard.

ARNOLD BAYNARD, SWORN

THE CLERK: Would you please state your full name and spell your last for the record.

THE WITNESS: Arnold Percy Baynard, B-a-y-n-a-r-d.

THE COURT: Please proceed.

DIRECT EXAMINATION

[187] BY MR. MULLER:

Q. Is it still Officer Baynard or is it Sergeant Baynard?
A. It's Officer Baynard.
Q. Okay. Because I want to make sure.
What is your current assignment with the Simi Valley police department?
A. I'm a senior officer of the police department. I'm a training officer and on the SWAT team.
Q. And when did you start with the SWAT team?

A. I believe it was August of '96.
Q. I want to bring you to a search warrant that was served February 3rd, 1998. Were you part of any meetings in preparation for the search warrant service?
A. Yes.
Q. And were you told anything about the place you were going to be serving the search warrant?
A. Yes.
Q. What were you told?
A. That we were going to look for a weapon. I believe it was a handgun that was involved in some type of crime.
Q. Were you told about any of the people that you might encounter?
A. Yes.
Q. What were you told?
A. That they, I believe they were gang members, possibly [188] gang members: And one of the officers talked about a domestic violence situation he had. I don't know if it was that year but it was prior to the search and he had spoke about the incident and said they would probably not be happy to see the police.
Q. Okay. And what was your duty on the date of the search?
A. I was going to be the person who did the forced entry.
Q. You were the ram guy?
A. Yes.
Q. And what are the duties of the ram guy or what were the duties of the ram guy on that date?
A. My first assignment was to get in line which I was, whatever the assignment. I think I was the fifth guy or sixth guy and I was to wait for Detective Lamb to do the knock and notice. And I believe it was Detective Lappin would tell me when to ram the door.
Q. Okay. And in terms of just the guy holding the ram, being the ram guy, what were the duties of the ram guy for that search warrant service?

A. To forcibly enter the residence.

Q. Now, were you told that you were going to make forced entries through multiple doors?

A. I don't recall.

Q. Do you recall your deposition of June 2nd, 1999?

A. Okay. Yes, I remember talking to you.

Q. All right. And is that deposition—

* * * *

IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

THE HONORABLE A. HOWARD MATZ,
JUDGE PRESIDING

CASE NO. CV 98-8512-AHM

IRIS MENA, *et al.*,
Plaintiffs,

-v-

CITY OF SIMI VALLEY, *et al.*,
Defendants.

REPORTER'S TRANSCRIPT OF PROCEEDINGS
LOS ANGELES, CALIFORNIA
THURSDAY, JUNE 14, 2001

LYNNE SMITH
OFFICIAL COURT REPORTER
UNITED STATES DISTRICT COURT
312 NORTH SPRING STREET
LOS ANGELES, CALIFORNIA 90012

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[6] How did you enter the room?

A. Walked through the doorway.

Q. You didn't break the door open?

A. No, sir.

Q. Did you see any damage to that, the door jamb after you entered the room?

A. I didn't notice any, no.

Q. So you have no memory of knocking that door in.

A. No, sir.

Q. Do you remember Officer Lappin knocking that door in?

A. No, sir.

Q. Is that something you would remember?

A. If it was significant, yes.

Q. Well, I mean, would that be significant to you so that you'd remember it?

A. That specific incident wasn't significant enough for me to remember it, no.

Q. Okay. Once you got in the room, do you recall seeing a woman on the bed?

A. Yes.

Q. And did she appear to be sleeping?

A. Yes.

Q. And what did you do after you noticed this woman who appeared to be sleeping in the bed?

A. We told her not to move, identified ourselves as police [7] officers and continued to do that.

Q. And she did that?

A. Correct.

Q. What happened after you notified her that you were police officers?

A. I approached her, put her hands in a control hold and placed handcuffs on her.

Q. Explain what a control hold is.

A. Basically put her hands together behind her back like this (indicating) in order for me to, so I can use one hand in order to control both of her hands.

Q. Was she face down on the bed when you did this?

A. Yes.

Q. Now, when you notified her that you were police officers, do you know if she was fully awake yet?

A. I noticed at one point that she had opened her eyes. Whether she was fully awake, I don't know.

Q. Did you ever see anyone grab her and turn her around?

A. No.

Q. You didn't see someone grab her and turn her around right before the handcuffs were applied to her?

A. No, sir.

Q. Was she ever uncooperative while you were in contact with her?

A. No. She was very cooperative.

[8] Q. Did she do anything aggressive the entire time you had contact with her?

A. Not at all.

Q. After you handcuffed her, did you then stay in the room with her for a period of time?

A. Yes, sir.

Q. How long did you stay in the room with her?

A. I would estimate five to ten minutes.

Q. And at any time while you were with her, did she do anything to indicate she was a risk to you or to anyone else?

A. No, sir.

MR. MULLER: I have no further questions.

THE COURT: All right. Cross-examination or in your case direct examination.

MR. NYE: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. NYE:

Q. Good morning, Officer.

A. Good morning.

Q. You've been with the police department for 11 years, did you say?

A. Yes.

Q. And what has been your experience with the police department in terms of assignments?

A. I originally worked patrol. Worked as a field training

* * * *

[15] A. No, sir.

Q. Did you see anybody do anything at all that you considered to be inappropriate?

A. No.

MR. NYE: Thank you.

THE COURT: Mr. Muller?

MR. MULLER: No questions.

THE COURT: Okay. Thank you, sir. You're excused.

Please call your next witness.

MR. MULLER: I would like to call Iris Mena to the stand.

THE COURT: All right.

IRIS MENA, SWORN

THE CLERK: Please state your full name and spell your last name for the record.

THE WITNESS: Iris Mena, M-e-n-a.

MR. MULLER: Ms. Mena's deposition is on top of your desk there right in front of you.

DIRECT EXAMINATION

BY MR. MULLER:

Q. Good morning, Ms. Mena.

A. Good morning.

Q. How are you?

A. Good.

Q. Have you ever testified in court before?

[16] A. Never.

Q. And how old are you?

A. 22.

Q. Now, back on February 3rd, 1998, how old were you?

A. 18.

Q. And back on February 3rd, 1998, where were you employed?

A. I'm sorry? I didn't hear you.

Q. Oh, I'm sorry. Where were you employed?

A. PSI Bearings.

Q. What did you do at PSI Bearings?

A. I was checking parts for airplanes.
Q. Were you born here, Ms. Mena?
A. No.
Q. When did you come to this country?
A. Almost eight years ago.
Q. And where did you come from?
A. El Salvador.
Q. When you came to this country, did you have proper immigration papers?
A. Yes.
Q. And what is your immigration status now?
A. Resident alien.
Q. Are you applying for your citizenship?
A. Yes.
Q. And what stage of the process are you at?
[17] A. I have given my fingerprints twice. And I'm just waiting for them to make an appointment so I can go and proceed to whatever they do to be able to be a citizen.
Q. Now, how old were you when you came here?
A. 14.
Q. And before you came here, did you speak English at all?
A. No.
Q. And what are you currently doing?
A. I have a seven-month beautiful baby boy. I take care of him. Sorry. I'm just kind of nervous. I'm trying to get my high school diploma to be able to be a surgical technician and offer him a better life.

THE COURT: One second, Mr. Muller. If you'd like to pour some water and if at any point if you need to take a break, just let me know. All right?

THE WITNESS: Thank you.

BY MR. MULLER:

Q. Did you say that you're studying to be a surgical technician or you want to study to be a surgical technician?
A. I want to be a surgical technician.
Q. You'll let me know if you don't understand any of my questions, okay?
A. Okay.
Q. Feel free to do that.
A. Okay.
[18] Q. Now, on February 2nd, did you work the day before the incident?
A. Yes, I did.
Q. And what was your shift?
A. It was from 3:00 in the afternoon until 12:00 o'clock, midnight.
Q. And what time would you usually get to bed when you worked that 3:00 p.m. to 12:00 midnight shift?
A. Usually like around 2:00 o'clock in the morning.
Q. And you lived at 1363 Patricia Avenue back on February 3rd, 1998?
A. Yes.
Q. Who did you live with?
A. With my parents, my mom.
Q. And who is your mom?
A. Maria and my dad Jose.
Q. Where was your mother the morning of February 3rd, 1998?
A. She was at work.
Q. Can I ask you to move that Kleenex just a little bit. It's kind of blocking my view of you. Thanks.

And what time, do you know what time she left for work that morning?

A. She usually like around 5:00 o'clock in the morning.
Q. And where was your dad?
A. In Long Beach where he works still.

[19] Q. And why was he in Long Beach that morning?

A. Because he's a truck driver and he works for that area.

Q. Did he sleep at home on February 2nd, do you know?

A. No, he didn't.

Q. Do you know where he slept?

A. I believe that his trailer has a bed inside there so he used to sleep there.

Q. The truck trailer has a—

A. The truck trailer, yes.

Q. —has a compartment over the cab where you can sleep?

A. Yes.

Q. I want to take you to February 3rd, 1998. Were you woken up by something unusual?

A. Yes, I was.

Q. And how were you woken up on that date?

A. All I heard, it was a big bam on my door, my bedroom door. I'm not sure if it was the bedroom door or the front door. And I saw a person dressed in black pointing a gun with a light on top.

Q. What do you mean by a light on top, the gun had a light on top?

A. It looked like it was a long gun pointed at me like this (indicating) and with a light on top.

Q. So like a flashlight pointing at you?

A. Yes.

[20] Q. Did they point that at your face or your body?

A. At my face.

Q. And did you hear—strike that.

Was that just one person or were there two?

A. It was only one.

Q. Do you ever remember another person with a gun in your room that morning?

A. No, I don't remember.

Q. And do you remember the person saying anything when they pointed this gun at your face?

A. Yes. They told me to stand up and turn over and put my hands back.

Q. Now, you said "they" told me to stand up. You know they means two people.

A. No. I just heard only one voice. It was only him.

Q. They told you to stand up and to do what?

A. To turn over and put my hands behind my back.

Q. All right. Now, when these people or this person came in, did you know who they were—who he was?

A. No, I didn't.

Q. What did you think when you saw this person come into your room with the long gun and pointed it at you?

A. I thought he was just coming in to rob and kill me.

Q. And what happened after you turned around?

A. I stood up like I was said and I was facing down, looking [21] at the bed, and he pushed me on the bed and he grabbed my hands and put the handcuffs on me.

Q. How did you feel when you were pushed—emotionally how did you feel when you were pushed down on the bed?

A. I was real afraid.

Q. Why were you afraid?

A. Because I didn't know who they were and why they were doing that.

Q. Now you're saying they again. Do you mean—

A. Him.

Q. Okay.

A. Yeah, because I could hear voices. That's why I say always they. Like people talking outside.

Q. You heard people talking outside your room, voices you didn't recognize?

A. Yes, I didn't recognize.

Q. Now, at any point in time before you were handcuffed, did you hear anybody say police or anything like that?

A. No.

Q. Did you see anything on this person to indicate that he was a police officer?

A. No.

Q. Was it light or dark in your room when this person came in?

A. Real dark.

[22] Q. Why was it real dark?

A. Because the lights were off and it was early in the morning and the windows were closed. And my mom has a real thick curtain on the window that makes it darker inside the room too.

Q. Now, at the point that you were handcuffed, did you then think that this might be police who were in your room?

A. Yes.

Q. And why did you think that?

A. Because I think those are the only persons that put handcuffs on people.

Q. What happened after you were handcuffed?

A. I was facing down on the bed and he pulled my shirt and he stood me up to take me out of my house to the garage.

Q. Now, just for the written record, you made a motion to the back of your neck. Is what where he pulled your shirt?

A. Yes.

Q. And then he made a motion for you to go where?

A. To the garage.

Q. Describe what you mean by he made a motion.

A. He just grabbed me by my shirt and he was holding my arm and took me into the living room to the kitchen to go to the garage.

Q. Now, what were you wearing when you were asleep in your bed?

[23] A. Green sweats and a black long-sleeve shirt.

Q. Okay. Were you—before you were taken out to the garage, were you allowed to put on any shoes?

A. No, not that I remember.

Q. And to get to the garage, do you have to go outside?

A. Uh-huh, yes.

Q. And was it raining that day?

A. It was raining.

Q. How hard was it raining?

A. Medium raining.

Q. So did you have to walk through wet ground to get to the garage?

A. I'm sorry?

Q. Was the ground wet when you walked outside to get to the garage?

A. Yes, it was.

Q. And just we're probably all clear on this but is this the route you took through the living room, through the kitchen, out this door and all the way across here to the garage?

A. Yes.

MR. MULLER: And I'm referring for the record to Exhibit 61A.

BY MR. MULLER:

Q. you said you were awakened by a bang. Was it one bang or more than one bang?

[24] A. I heard only one.

Q. Now, was your bedroom door locked when you went to sleep that night?

A. Yes.

Q. Why was it locked?

A. We usually lock our bedrooms for the people that was renting over there like the other people.

Q. Okay. Can you explain that a !ittle because, I mean, can you explain the reason why you locked the bedroom for the people.

A. Because I didn't trust the person that was living with us.

Q. And who is that?

A. I think his name was Raymond.

Q. Raymond Romero?
A. Yes.
Q. And why didn't you trust him?
A. Because I didn't know what kind of person he was. We never have a big relationship with the persons that rents the room in our house.
Q. How long had Raymond been living at your house before the search?
A. I don't know. He was living there since I moved back to my parents'. November '97, I believe.
Q. Okay. Did your door have a padlock?

[25] THE COURT: Do you know what a padlock is?

THE WITNESS: Yes. Yes.

THE COURT: Okay. Go ahead.

BY MR. MULLER:

Q. Okay. And was the padlock on when you went to bed?
A. Not the one on the outside. But the one on the inside was.
Q. And you're smiling because obviously you couldn't lock the padlock from the outside and then get in the room.
A. No.
Q. And in general, did you lock your room every time you left home?
A. Yes.
Q. And why did you lock it every time you would leave home?
A. Because I had personal things in my room and I didn't want the people that share the house to get into them.
Q. When you took a shower, would you lock the room?
A. Yes, I would.
Q. And is that for the same reason?
A. Yes.
Q. What happened when you were taken out to the garage?

A. We were told to stay in the garage. We sat on the bed that was right there. I was asking one of the officers that was with us what was going on. And he said that he wasn't in charge to explain it to me what was going on.
[26] Q. Now, before you got to the garage, did any officer tell you what was going on?
A. No.
Q. Did any officer show you a search warrant?
A. They never did.
Q. So for the entire time the officers were there, they never showed you a search warrant?
A. No.
Q. When you were in the garage, did you have any other conversation with the police or with any police officer after you asked what was going on?
A. I asked them why I had to be handcuffed. And he said that that was part of doing their job.
Q. And was that all he said about you being handcuffed?
A. I asked him why they don't take it off. And he said that he had asked one, his, they're like their highest officer, if he would be able to take it off, the handcuffs.
Q. How did you feel about being handcuffed?
A. I felt real humiliated.
Q. And before that day, had you ever been handcuffed?
A. I never had.
Q. Had you ever been arrested?
A. Never.
Q. Had you ever had any problems with the police?
A. Never.
[27] Q. And what was the feeling like of being handcuffed, was it painful?
A. It was real uncomfortable.
Q. Did it get more uncomfortable the longer you were handcuffed?
A. Yes.

Q. Did you have any other conversations with people, with police officers while you were in the garage?

A. One of them asked me what was my name and my date of birth and where I was from and if I was a legal alien in this country.

Q. Do you know who asked you that?

A. I think it was the officer that was with us the whole time in the garage.

Q. Okay. Now, you're saying "us." Who else was in the garage with you besides the officers?

A. Three people. It was Leticia, Shawn and Carlos.

Q. All right. After you were asked about whether you were a legal, whether you were illegal or not, did you have any other conversation with the police?

A. No.

Q. At some point in time did someone get you shoes and a jacket?

A. After a while, they did.

Q. Now, when you—were you ever asked to prove that you [28] were a legal resident or a citizen of the United States?

A. Yes.

Q. And explain to the jury what happened there.

A. I believe they called another person and he was, he got into the garage after a while and he said that he was from the immigration and he asked me where my papers were. And I said they were in my purse inside my room. He said where they were at. I told him and they went and got inside the house. One of them got inside the house. And once they got my purse and he took out the papers out of my purse and give them to the person from the immigration center.

Q. The person who got your purse, was that a police officer or was that a person from immigration?

A. A police officer.

Q. Did you give them permission to go into your purse?

A. I told him where they were but I never told them open my purse. He was like telling me where my papers were.

Q. While you were sitting in the garage, did you hear anything going on in your house?

A. Yes.

Q. What did you hear?

A. I was hearing like there were people moving stuff, throwing stuff and breaking noises too.

Q. Did you ever see an officer break a door?

A. Yes, I did.

[29] Q. And how did you see the officer break the door because you were in the garage, how were you able to see that?

A. The door was all the time kept opened.

Q. We're referring to Exhibit 61. Can you tell me where that door was in Exhibit 61.

MR. NYE: Excuse me, Your Honor. May I move around so I can see what he's point to.

THE COURT: Yes. You can move over there.

THE WITNESS: Where it says "convert bedroom."

BY MR. MULLER:

Q. Yes.
A. Right there where you're pointing.
Q. This one over here?
A. No. That one.
Q. This door.
A. Yes.
Q. Where were you when you saw that?
A. I was sitting on the bed.
Q. Where, in the converted garage?
A. Uh-huh.
Q. Where was that—
A. Yes.

THE COURT: Wait, wait one second. Does "um-hum" mean yes?

THE WITNESS: Yes.

[30] BY MR. MULLER:

Q. Where in the converted garage were you sitting?
A. On the bed.
Q. Where was that bed?
A. It was right in front where the door was opened.
Q. Right here (indicating)?
A. Yes, right there.
Q. Were you ever moved from that bed?
A. I moved myself because it was kind of cold and I wanted to get a little bit more inside the garage.
Q. So where did you move to?
A To the next bed that it was right next to.
Q. Okay.

THE COURT: Why don't you write in "Bed 1" closest to the door at a point where the witness can tell you where it would be appropriate. Use a red marker or something. It doesn't really matter but write it down.

BY MR. MULLER:

Q. Is this where it was (indicating)?
A. Yes.
Q. And the door that you saw being broken apart was right here (indicating)?
A. Yes. It was already broken. It was just a piece.
Q. So the door was already broken when the officer broke it?
A. Yes.

[31] THE COURT: You mean the door was already broken when she first saw it.

MR. MULLER: I'm sorry. Let me clear that up.

BY MR. MULLER:

Q. When you first saw it, was the door already partially broken?
A. Yes, it was.
Q. And what did the officer do to it?
A. There was a piece of the door laying on the floor and he grabbed it, he threw it back on the floor and he said I like to break this kind of material. It feels like cardboard.
Q. Okay. And do you recall the name of that officer?
A. No.

MR. MULLER: I would like to approach the witness.

THE COURT: You may.

BY MR. MULLER:

Q. I'm showing you Exhibit 54.

MR. MULLER: I think I need her to approach so the jury can see her.

THE COURT: All right. You may step down, Ms. Mena, and approach the chart the lawyer just put on the easel. Stand nearby it, please.

(WITNESS COMPLIES)

BY MR. MULLER:

Q. All right. I would like you to take a look at this [32] chart with the photographs. Can you identify the officer that you saw breaking the door?
A. I don't remember.
Q. Do you recall at your deposition you were shown photographs of the officers?
A. Yes.
Q. And do you remember at your deposition that you were able to identify the officer who you saw breaking the door apart?
A. Yes, I remember.

Q. I'm going to show you, to refresh your recollection, I would like to show you Exhibit C from your deposition. Does that refresh your recollection as to the officer, the name of the officer who you saw breaking the door?

A. No. I can't remember his face right now.

Q. Okay.

MR. MULLER: And for the record, I showed the witness a picture of Officer Vince Allegra.

THE COURT: Okay. And the exhibit number for the collection of the photographs is what?

MR. MULLER: That's Exhibit 54.

BY MR. MULLER:

Q. At some time did you see someone video taping?

A. Yes, I did.

Q. Who did you see video taping?

A. It was a lady.

[33] Q. How did you feel when you saw this person video taping you?

A. Embarrassed.

Q. Why were you embarrassed?

A. Because I thought that he was going to show the TV and say that we were criminals.

Q. Did you say anything when you saw this person video taping?

A. Yes. I asked them why they were video taping.

Q. And what were you told?

A. They told me it was part of their job to do that.

Q. Were they friendly to you when they said that?

A. No.

Q. How did they say it to you?

A. They just, he just yelled at me and said that.

Q. And who do you mean by "he"?

A. The person who was with us in the garage all the time.

Q. And that person, when you say "person," you mean officer?

A. Officer.

Q. Did the immigration service, did they come before or after that video tape was taken of you?

A. I don't remember.

Q. Now, your father rented rooms in your house. Who was renting rooms inside the house on the date of this search; do you remember?

[34] A. Only Raymond.

Q. What about the converted, I think we're calling it converted bedroom, was somebody renting that?

A. Yes.

Q. Did you consider that part of the house?

A. Yes.

Q. Now, were the rooms, were each of the bedrooms that were rented out, were they private?

A. Yes, they were.

Q. How, were the rooms kept private?

A. They had their own key.

Q. What do you mean they had their own key?

A. They had their locks.

Q. Each person had a key to his or her room?

A. Yes.

Q. And what about the trailers and motor homes in the back yard, were they private?

A. Yes, they were.

Q. Was anyone besides you, your father and your mother allowed access to your bedroom?

A. No, nobody.

Q. Where did your father keep his clothes on February 3rd, 1998?

A. In the outside drawers that they were in the living room.

MR. MULLER: Okay. At this time I would like to show [35] Exhibit 51, the video tape, and I'd like to go through it with Ms. Mena. I'll try to speed through certain parts.

(VIDEO TAPE PLAYED)

BY MR. MULLER:

Q. All right. Let's stop it right there. Now, I see something up here on the wall in the video tape. First of all, what room is this?

A. That's the living room.

Q. And I see something up on the wall here. What are those?

A. They're signs for the people that lives in the house.

Q. And what do those signs say?

A. One of them I believe says that they have to clean the stove every time they cook and also wash their own dishes.

Q. Can you remember any of the other signs?

A. One of the signs I think says that they're not allowed to turn it on the TV in the living room.

Q. So were the renters allowed to use the living room and kitchen and bathroom inside the house?

A. Yes, they were.

Q. But not the TV always.

A. No. They were allowed to cook in there and sit down on the table in the living room. And if they feel like it, they could sit down on the couches.

Q. All right. Now what are we looking at?

A. That's the front door.

[36] Q. And are those the signs you were talking about?

A. Yes.

Q. Here we're looking at the kitchen?

A. Uh-huh, yes.

Q. Now we're looking at the converted bedroom here (indicating) ?

A. Yes.

Q. Do you see the part of the door that you saw the officer break and say that he enjoyed breaking it because it was like cardboard?

A. It was a piece laying outside the room.

Q. Now, who inhabited this room?

A. Marcos.

Q. Do you know Marcos' last name?

A. Cordon.

Q. And do you see a refrigerator in the room?

A. Yes.

Q. Did all of the renters' bedrooms have refrigerators?

A. Yes, they did.

Q. Do you recall if this room had a padlock on it?

A. It did.

Q. Now, do you see—I'm getting confused. Now we're outside.

All right. Now where are we looking?

A. My room.

[37] Q. And you see the photographs on the wall. What did we have on the table here?

A. Usually perfumes and lotions.

Q. Now, I notice a lot of boxes in the room full of clothes. What are those?

A. Those are clothes that we collect from my family and friends because we are volunteers for the organi—I can't say that word—to the rescue organization.

Q. Let me stop the video. The rescue what?

A. Organization.

Q. Organization?

A. Organization. And they collect clothes for the homeless people, this country and Central and South America.

Q. So were all the boxes for those people or were some of those just your possessions?

A. A lot of boxes it was to send to these people.

Q. And some of the boxes were your possessions too?

A. The ones inside the room only. Not the ones in the living room.

Q. Okay. So let me get this straight. The ones in the living room were the ones that you were sending to people.

A. Yes.

Q. Now, I notice a lot of clothes piled up there. Why are those clothes piled up in the closet of your bedroom?

A. Because they wouldn't fit in the drawers.

[38] Q. And who kept their clothes in this room?

A. My mom and I.

Q. I will stop right here. Do you see the door jamb right here (indicating)?

A. Yes.

Q. Was that broken like that before the search?

A. No, it wasn't.

Q. And now we're looking and referring to Exhibit 61A. Is this the empty bedroom?

A. Yes.

Q. Now, was this bedroom door locked on the date of the search?

A. No, it wasn't.

Q. And how do you know that?

A. Because it was empty.

Q. So this door could have been opened just by turning the handle?

A. Yes.

Q. This is Raymond's room (indicating)?

A. Yes.

Q. Had you ever been in Raymond's room before the search?

A. No.

Q. Now, what are we seeing here, what room are we seeing here (indicating)?

A. The garage.

[39] Q. Is this the converted garage?

A. Yes.

Q. Do you know if that door was open or closed?

A. It was open too.

Q. And why do you say that?

A. Because it was empty.

Q. What do you mean by "empty"? Isn't there furniture in there?

A. Yes. But nobody was living there.

Q. All right. And we see a bed. Is that bed depicted in Exhibit 61, the bed we just saw?

A. Yes.

Q. And was that the bed where you sat initially?

A. Yes.

Q. And this video was taken after they got you the jacket. Let me ask you then: Are you wearing the jacket that the police got you in this video?

A. Yes.

Q. How long had you been sitting in the garage before this video was taken?

A. I don't remember. It was probably like half an hour, an hour.

Q. Are you sure about that?

A. No, I'm not sure.

Q. Who is sitting next to you on the bed?

[40] A. Leticia.

Q. Do you know how old Leticia is?

A. She's 55 now.

Q. And where did she live?

A. She lived in one of those trailers.

Q. And who is pictured now in the video?

A. Shawn.

Q. Shawn who, do you know Shawn's last name?

A. No, I don't.

4. And where did Shawn live?

A. In the other, in the motor home.

Q. Do you see a man standing behind Shawn; do you recall who that was who was wearing those clothes?

A. I think it was Carlos.

Q. When the INS came, was anyone taken away by the INS—I'm sorry.

A. Who's the INS.

Q. You don't know. When immigration came, was anybody taken away by immigration?

A. Yes.

Q. Who was taken away?

A. Carlos.

Q. And can you identify the police officers who are in the room here with you?

A. No, not right now. I don't remember.

[41] Q. Now, what's this view that we're looking at here (indicating)?

A. Outside of the garage, the back yard.

Q. Okay. And we're looking into the converted garage?

A. Yes.

Q. And so if you were facing out from the converted garage, what would you be looking at?

A. Straight ahead to Marcos' room.

Q. That's the converted bedroom?

A. Yes.

Q. All right. Now, after that video was taken, how long were you sitting in the garage there; do you recall?

A. For a long time after that.

Q. Do you have an estimate?

A. Probably like two hours.

Q. I will play again Exhibit 51. Now, what does this show right here (indicating)?

A. That was a drawer where my dad used to keep his important papers—

Q. Was that—

A. —inside our room.

Q. Was that drawer locked?

A. It had a lock on it.

Q. Now, a lot of the rooms were padlocked. Were there any closets that were padlocked?

[42] A. All of them were.

Q. Did you have keys to the padlocks?

A. Yes, I did.

Q. Where were those keys?

A. In the second drawer right there. The one that is not broken.

Q. So the second drawer right here (indicating)?

A. Yes.

Q. Was that drawer locked?

A. No, it wasn't.

Q. Would you have given the police keys to the padlocks if they had asked you?

A. Of course.

Q. Why is that?

A. Because I just wanted to cooperate with them.

Q. Now as we go through, can you tell me, point out things that you see that were different in your room from when you had gone to bed that night.

A. That mountain of clothes on top of the bed and also some items on the floor.

Q. What were the items on the floor? We'll have to back up.

A. Yes, you'll have to back up a little bit. Right there (indicating).

Q. Those items weren't on the floor before?

A. No.

[43] Q. How long did it take you to put that mountain of clothes back? Let me back up. Who put that mountain of clothes back?

A. My mom and I.

Q. And how long did it take you and your mom to put those clothes back?

A. Probably like part of that day and the next day too.

Q. Okay. Do you know what part of that day it took?

A. After they left, I called my mom and she came and we started trying to clean it up a little bit.

Q. So can you—was it an hour, two hours, ten minutes?

A. No, all day.

Q. How did you feel about police officers going through your possessions, your things?

A. I just felt that it wasn't right.

Q. As we go through this, point out anything that you can recall that's different from before the search to after the search. Let me stop. Did you keep food in that refrigerator?

A. Yes.

Q. I notice something right here (indicating). Do you know what that is?

A. Gloves.

Q. Did you see plastic gloves throughout your house?

A. Everywhere.

Q. Where were they?

A. Some was on the floor. Some were on the kitchen table. [44] By the chimney too. On the kitchen floor too.

(END OF TAPE)

Q. And did you have to do any other cleaning up besides the clothes on the bed, other things inside your room?

A. The living room, the closets. I had to clean the floors too because they were muddy. They were really dirty.

Q. Was your house clean before they came in?

A. Yes, it was.

Q. Was there, were there boxes?

A. There were boxes. But I don't think it was dirty like a lot of people said in here.

Q. I will stop again. Is this another glove on the floor?

A. Yes.

Q. These boxes here, what are those?

A. Those are the boxes that we always kept in the living room for the rescue mission.

Q. And you see some more gloves right here (indicating)?

A. Yes.

Q. And are those also a pile of gloves on the table?

A. Uh-huh. There's more right there too (indicating).

Q. Did you have trash cans in your house?

A. Yes. Those appliances, they weren't outside before the search. They were inside. They were inside those doors.

Q. You're talking about the appliances on the stove?

A. Yes, none of those.

[45] Q. What about this door, was it broken before the search?

A. No, it wasn't.

Q. Now, going into this room, do you see the pieces of door that you testified that the officer was breaking?

A. It was just right there (indicating). You have got to back up a little bit.

Q. Let's see if the video backs up.

A. Okay.

Q. All right. Do you see the door?

A. Yes. It's that piece right there on the floor (indicating).

Q. This one (indicating)?

A. Yes.

Q. Was the officer laughing when he said he enjoyed breaking that kind of stuff?

A. Yes, he was.

Q. Did you see who he was talking to?

A. Huh-uh, no.

Q. Now, this converted bedroom, was it—let me ask you this. When did your father purchase the home on Patricia?

A. Two years after I came to this country. I was 16 years old so it was like six years ago.

Q. Was this converted bedroom in the house when you guys came to it?

A. Yes, it was already there.

[46] Q. Had anyone told you before the search that this was not a legal addition to the house?

A. Before the search?

Q. Before the search.

A. No.

Q. And that was the view from the converted bedroom to the garage that we just saw?

A. Yes.

Q. The empty bedroom again. Let me fast forward.

And what are we looking at here?

A. That's another closet.

Q. Who kept stuff in that closet?

A. My mom.

Q. And was that closet padlocked?

A. Yes, it was.

Q. And is this a different closet?

A. Yes.

Q. Was that closet broken from the search?

A. Yes, it was.

THE COURT: You still have it moving. Is it rewinding?

MR. MULLER: I thought I had pushed stop. I'm sorry.

BY MR. MULLER:

Q. While you were in the garage, did anyone ask you about Raymond Romero?

A. No, they never did.

[47] Q. Now, if you had heard someone knocking at your front door, would you have let them in that morning?

MR. NYE: Objection; calls for speculation.

THE COURT: Overruled.

THE WITNESS: Does that mean I can answer it?

THE COURT: You can answer, yes.

THE WITNESS: Okay. I would if I would have known who it was.

BY MR. MULLER:

Q. How far was your bed from that front door, do you know approximately?

A. Probably like a few steps.

Q. So based on your living in that room for several years, do you believe that you would be able to hear someone knocking loudly at that front door if you're in your bedroom?

A. Yes.

Q. Do you know if the sun was up when the police came to your house?

A. No, it wasn't.

Q. Now, was that because it was cloudy out or was that because it was not dawn yet?

A. It wasn't dawn yet. It was what you said. Sorry.

Q. I want to be clear because I don't want to confuse you. Do you know if the sun had risen or do you know if it was just the sun wasn't out just because there were clouds in the sky?

[48] A. It wasn't out because it was raining that day.

Q. Okay. Now, how has this search affected you emotionally?

A. It had affected me. I had nightmares after this happened thinking that they were going to come into my house again and do the same thing. And still at this moment sometimes I still have nightmares about it.

Q. What are those—do those nightmares follow kind of a same type of scene in your head; is it the same thing you see?

A. Yes, the first thing that I saw. And when they come into my room with their black uniforms pointing a gun at me.

Q. Would these nightmares wake you up or would you continue to sleep?

A. They wake me up.

Q. When did you finally learn why the police were there at your house?

A. Why they were in the house, you said?

Q. Yes. When did you learn why the police were in the house?

A. When they took me back into the living room.

Q. Were you still handcuffed when you were taken into the living room?

A. Yes.

Q. And when were your handcuffs removed?

A. When I was in the living room again, back again.

Q. And what did the police tell you at that time?

[49] A. I asked them why they were there and they said that they were looking for some gun in the house that was related to some type of case that they were trying to solve.

Q. Did they say anything else to you about it?

A. No. I told, I asked them how come they didn't ask me for the keys. And they said that that was the way that they were taught to work and they had the right to do it that way.

Q. What did you take that to mean, the way they were taught to work?

A. Like that was the way they had to work.

Q. You mean that they were taught to break into rather than ask someone for the keys?

A. Yes.

MR. NYE: Objection; leading.

THE COURT: Sustained.

BY MR. MULLER:

Q. Did you have any conversation with that officer about the damages to your house?

A. I asked them who was going to replace the doors. And he said that I needed to talk to the city, the City of Simi Valley, and they would replace all the damages around the house.

Q. And did the City of Simi Valley ever replace the damages around the house?

A. No.

MR. MULLER: I don't have any further questions.

[50] THE COURT: All right. Thank you.

Cross-examination.

MR. NYE: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. NYE:

Q. Good morning, Ms. Mena.

A. Good morning.

Q. I don't think we've formally met before. My name is David Nye.

A. Pleased to meet you.

Q. Your date of birth is March 22nd, 1979; is that correct?

A. Yes.

Q. And you lived at 1363 Patricia Avenue right up until your 18th birthday; is that correct?

A. Yes.

Q. And then when you turned 18, you moved out of the house; is that correct?

A. Yes.

Q. You moved in with your boyfriend at the time who eventually became your husband; is that correct?

A. Yes.

Q. You left—you would have moved out of the house around March 22nd of 1997; is that right, your 18th birthday?

A. Yes.

Q. And then you moved back into the house in about October [51] of 1997, correct?

A. Yes.

Q. And that was because your marriage had not worked out, correct?

A. Yes.

Q. Then you lived in the house from October 1997 up until the date that the search warrant was served which was February 3rd of 1998; is that right?

A. Yes.

Q. And you were living in the house the whole time?

A. Yes, I was.

Q. After the search warrant was served, you continued to live in the house from February 3rd, 1998 up until July of 1998; is that right?

A. Yes.

Q. And then in July you actually continued to live there but you started spending nights away from the house; is that right?

A. Yes.

Q. And you met a new boyfriend in June of 1998 and you began spending the nights with him in July of 1998?

A. It wasn't with him. It was in the house where his aunt lives. But it wasn't with him.

Q. I just meant in the same building with him.

A. Yes.

Q. In other words, you were not spending the nights on [52] Patricia Avenue after July of 1998; is that correct?

A. Yes.

Q. Where do you currently live?

A. With my parents.

Q. When did you move back into the house?

A. Like around November of '98.

Q. Okay. Between the time that the search warrant was served on your house and the time that you started spending nights elsewhere, which would have been about four or five months later, did you ever go to see a doctor or a counselor of any kind about your nightmares?

A. No, I didn't.

Q. Do you seek out any kind of medical treatment for any problems that you associated with the search warrant execution?

A. I didn't.

Q. Now, have you always shared a room with your mother when you lived at Patricia Avenue?

A. Yes.

Q. Has it always been the same bedroom you pointed out on the diagram?

A. Yes.

Q. And is the reason that you share a room with your mother so that there will be additional rooms that are available to rent out to other people?

MR. MULLER: I'm going to object as irrelevant.

[53] THE COURT: Sustained.

BY MR. NYE:

Q. You indicated that your father worked in Long Beach and spent how many days a week at the house?

A. Usually five days.

Q. Five days a week at your house?

A. No. He used to spend five days a week at his work in Long Beach.

Q. That's what I thought.

Now, at the time that this search warrant was executed, you had—strike that.

Before the search warrant was executed, in the weeks or months before that you would have people sleeping in rooms in various places in that house; is that correct?

MR. MULLER: Objection; vague.

THE COURT: Did you understand the question, Ms. Mena?

THE WITNESS: No, I didn't.

THE COURT: Okay. Could you reframe the question.

MR. NYE: Certainly.

BY MR. MYE:

Q. Would your father on occasion rent out the garage for people to sleep in?

A. No.

Q. Did he ever rent out the garage for people to sleep in?

A. You mean before this search?

[54] Q. Yes.

A. I don't remember if he ever did.

Q. You don't remember one way or the other if people were ever tenants in the garage?

A. No.

Q. He would rent out the other bedrooms in the house though, would he not?

A. Yes.

Q. And that would include the bedroom that Ray Romero was staying in at the time of this search warrant?

A. Yes.

Q. And the other bedroom that was vacant at the time, would that be rented out at times?

A. Yes.

Q. How about the converted room off the porch there where Mr., where Marcos was residing, was that rented out on a pretty regular basis?

A. Yes.

Q. How long had Marcos lived there; do you know?

A. He lived for a long time in that house.

Q. And how long had Mr. Hynes, that's Shawn Hynes, how long had he lived in your back yard?

A. I don't remember.

Q. Do you have any estimate for me?

A. No.

[55] Q. Was it, can you tell me if it was weeks or months or years?

A. No, I can't tell you.

Q. How about Leticia, do you know how long she had lived in your back yard?

A. She lived there for a long time.

Q. And you had a camper back in your back yard too, did you not, back in the very back corner?

A. For a what I have told I know, yes.

Q. Do you know if the camper was rented out?

A. No.

Q. You don't know or it was not?

A. I don't know.

Q. You had a couple trailers in your back yard too?

A. Yes.

Q. Were those routinely rented out to tenants?

A. Yes.

Q. And these tenants that would live in the motor homes and the trailers and the bedrooms, they would have access in and out of the house, would they not?

A. They would.

Q. They could come in and use the kitchen; is that correct?

A. Yes.

Q. And the bathroom?

A. Yes.

[56] Q. And the living room?

A. Yes.

Q. And they would have their own key to get in and out of the house; is that correct?

A. Yes.

Q. And they would all have the same key though; is that right?

A. Yes.

Q. At any time while you were living at the house, did people have animals at the house?

A. Just us.

Q. And what kind of animals did you have?

A. Two dogs.
Q. Are these big dogs or little dogs?
A. One of them is big and the other one is medium.
Q. Were the dogs allowed inside as well as outside?
A. What do you mean by inside and outside?
Q. Were the dogs allowed inside the house?
A. Yes.
Q. Were your tenants allowed to bring friends over and visit?
A. Yes.
Q. And the friends could come in the house also?
A. Most of the times they would knock on the front door and we would call whatever they were looking for and these people [57] used to come out of the house and talk to them.
Q. Did your tenants ever use the living room or the dining room to entertain their friends?
A. No.
Q. Would the tenants change; would you see new faces quite often?
A. They usually used to rent the rooms for a long time.
Q. Do you remember a gentleman by the name of Janero Gonzales?
A. I never saw him living in there.
Q. Do you know if Janero Gonzales ever rented a room from you?
A. No, I never knew.
Q. But you did know that Mr. Ray Romero was renting a room from you?
A. Yes.
Q. Did you know that Ray Romero was a gang member?
A. No.
Q. Do you have the right to screen the people that will be tenants at your house? In other words, does your father come to you and say I'd like you to meet Mr. Romero, I'm going to rent a room to him, what do you think?
A. No.

Q. That doesn't happen?
A. No.
[58] Q. If you see a new face around the house, somebody that you hadn't seen before, do you ask that person if they're living there or do you just assume that they're a new tenant.

THE COURT: Well, are asking about what happens now?

MR. NYE: No. This is back in—

THE COURT: Okay. Well, then please frame your questions accordingly, Mr. Nye. You keep saying do you do this, do you do that.

BY MR. NYE:

Q. Back in February of 1998, if you saw a new face in the house, somebody that you had not seen before, would you ask that person if they were living there?
A. Well, before they would have started living in the house, my dad would tell me, look, this person is going to start living over here, he's going to start renting a room over here.
Q. Would he introduce you to the person?
A. Yes.
Q. Would you have any right to say I'm not comfortable with that person living there?
A. Of course.
Q. Did you do that with Mr. Romero?
A. He was already living there when I went back to my parents' house.
Q. What is the most people that you can remember before February of 1998, the highest number of people that were renting [59] space at that house at one time?
A. Four people.
Q. I'm including the back yard in that. What was the largest number of tenants that you had in the house and in the back yard?
A. Five.

Q. Did you have any kind of a list anywhere in the house of who the current tenants were—

A. No.

Q. —back in February of 1998?

A. No.

Q. Did you have any kind of information as to how you could contact the tenants if you needed to?

A. No.

Q. Did you have any information as to who you should contact if there was any kind of an emergency with any of the tenants?

A. No.

Q. Would your—back in February of 1998, in that time frame, did your tenants receive mail at your house, if you know?

A. Yes.

Q. And where would that mail be delivered?

A. It was delivered to everybody in the house.

Q. Was there a central place for the mailman or mail person would leave all the mail or did the mail person go around to individual mail slots?

[60] A. I would personally put it in the room like under their bed and put their letters over there.

Q. So you would accept the mail and then you would take the mail into Mr. Romero's room and put it on his bed?

A. No, no, no. I never used to come inside his room and put it on his bed. Most of the time he wasn't in the house so the room was locked. And I used to put his mail under his door and just leave it there.

Q. Do you know whether your tenants had separate utilities or whether they're just one set of utilities coming into the house?

A. I don't understand that question.

Q. Okay. Do you know if your family paid for all the electricity that was used in the house?

A. No, I don't know.

Q. Your mother went to work on February the 3rd before the officers arrived; is that right?

A. Yes.

Q. Did you have any conversation with your mother before she left that day?

A. No.

Q. Do you remember her leaving that morning?

A. Uh-huh, yes.

Q. Did you wake up as she left the house that day?

A. Not really. I would have just hear her like getting [61] ready and then she would leave.

Q. And that would have been around 5:00 o'clock?

A. Yes.

Q. And then I assume you went back to sleep after that?

A. I was like half awake, sleeping and half awake. I wasn't awake when she left that morning.

Q. All right. And when the officers arrived, it's your testimony that you did not hear any knocking on the front door?

A. Yes.

Q. And you also did not hear anybody say "police officers, we have a search warrant, let us in."

A. I never heard that.

Q. It was a loud noise that awoke you; is that correct?

A. Yes.

Q. And you don't know for sure if that was a noise on the front door or a noise on the door to your bedroom; is that correct?

A. Yes.

Q. And you never saw more than one officer in your room the entire time you were in your room?

A. I never did.

Q. How long would you estimate it was between the time that the officer first entered your room until the time that an officer took you to the garage?

A. About like five or ten minutes.

[62] Q. And was the officer who entered the room the same officer who put handcuffs on you?

A. Uh-huh, yes.

Q. And was the officer who put handcuffs on you the same officer who took you to the garage?

A. Yes.

Q. And you're sure of that.

A. I'm not sure. But I couldn't look behind me if they changed persons, if they changed officers.

Q. Would that be while you were walking?

A. Yes.

Q. While you were in the room for that five to ten minutes, could you see the officer?

A. No, it was dark.

Q. Could you see anything at all in the room during those five to ten minutes?

A. As I remember, the person who put the handcuffs on me, he had a mustache.

Q. What went on for that five to ten minutes while you were in the room?

A. I was told to stand up and turn over and I did. He grabbed my hands to put the hand—when I stood up, he pushed me back into my bed and he grabbed my hands to put the handcuffs on me. And he picked me up by my shirt and then he took me out of the room to the living room to get into the garage.

[63] Q. I guess my confusion is that what you just described sounds like something that would have occurred in a relatively short period of time and I'm trying to understand what occurred over that five- to ten-minute period. So let me break it down into parts for you.

Between the time that the officer entered and the time that you were handcuffed, how much time do you think elapsed?

A. It was fast.

Q. Okay. Between the time that you were handcuffed and the time that the officer led you out of the room, how much time elapsed?

A. It was fast too.

Q. So when you said before that you were in the room for five to ten minutes, was that an error?

A. I couldn't tell you how much time it took because it took fast.

Q. All right.

A. It was fast.

Q. Let me try this then. If you're laying in your bed and the officer comes through the door and comes over and handcuffs you, you said that occurred fairly fast. Would that be a matter of seconds?

A. No, not seconds.

Q. How long would you say it took for the officer to get the handcuffs on you?

[64] A. I don't know.

Q. Can you give me any estimate whether it was a half a minute or five minutes?

A. No.

Q. None at all?

A. No, not at all.

Q. Can you give me any estimate as to how long it took the officers to grab you by your shirt after he handcuffed you and walk you out the door?

A. That was right away.

Q. As soon as you were handcuffed, he grabbed you by the shirt and picked you up and walked you out to the garage?

A. Uh-huh, yes.

Q. Yes?

And the shirt that you were wearing was a black long-sleeved shirt?

A. Yes.

Q. It wasn't a T-shirt?

A. No.
Q. And you had sweat pants on?
A. Yes.
Q. And then at some point in time officers brought you shoes and a jacket.
A. Yes.
Q. Was the officer that walked you to the garage the same [65] officer that stayed with you in the garage?
A. No.
Q. That would be a different officer?
A. Yes.
Q. How many officers stayed with you in the garage?
A. Only one.
Q. Did you ever see more than one officer in the garage with you?
A. No, only one.
Q. When you got to the garage, were Shawn and Leticia and Marcos already there?
A. Yes.
Q. And where were they seated, if you remember?
A. I think Shawn was sitting on the chair. And Leticia was sitting on the bed. And Carlos was standing.
Q. If you look at Exhibit 61, can you tell me what part of this room Leticia was seated in?
A. I think she was on the second bed.
Q. And the second bed was in what area, was it on this wall (indicating)?
A. Next to where it says bed first.
Q. It would have been right next to Bed 1?
A. It was just a little space in between them and then there was the other one.
Q. If I asked you to come down here and draw exactly where [66] you remember the beds to be, could you do that?
A. Yes.

MR. NYE: Your Honor, may she?

THE COURT: Yes. You may step down.

MR. NYE: I'm going to grab a marker.

THE COURT: Let's do it in red.

BY MR. NYE:

Q. Draw where the two beds—and if there is any other furniture that you remember in that room, can you show us where that was too.
A. I think a little bit right here was one bed. And then another one here. And right over here there were a door. And over here was another piece of furniture against this wall.
Q. All right. Thank you.

MR. NYE: Just for the record, she's indicated in red two rectangles, one on the north wall and one just south of that object as being the beds. She's indicated a rectangle on the east wall which she described as a piece of furniture.

BY MR. NYE:

Q. Is that correct?
A. Yes.
Q. And a small rectangle also on the north wall. But on the west side that I believe you said was a chest or—
A. Like a drawer.
Q. A drawer. Okay.

[67] The garage was divided in half; is that correct?

A. Yes.
Q. And there was a solid wall between the two rooms?
A. Yes.
Q. And the door to the garage had been permanently fixed so it was more like a wall with a door, a big door?
A. Yes.
Q. And then there was a small door that entered into the front of the garage?

A. Yes.

Q. And a small door that entered into the back of the garage; is that right?

A. Yes.

Q. You've got the two beds drawn and I realize this isn't to scale, but you've got them both almost within the doorway. Were they spread out more in the room than you've drawn or were they pretty much scrunched up against that wall?

A. What was the question again?

Q. Sure. Were the beds on this side which would be the north side, were they on the north side of this half of the garage or were they more centered in the garage?

A. They were more to this side.

Q. To the north side?

A. Yes.

Q. Thank you.

[68] Now, when you got to the garage, was Shawn handcuffed?

A. Yes.

Q. And was Leticia handcuffed?

A. Yes.

Q. Was Marcos handcuffed?

A. Marcos wasn't there. Carlos.

Q. I'm sorry, Carlos. My mistake. Was Carlos handcuffed?

A. Yes.

Q. Did you know that Carlos was not a legal immigrant?

A. No.

Q. And you said you moved from the first bed to the second bed at some point in time; is that correct?

A. Yes.

Q. And I believe your testimony was that was within 15 minutes to a half an hour of going to the garage; is that correct?

A. Yes.

Q. Well, let me just ask you fresh, how long would you estimate it was from the time that you got to the garage to the time that you moved from the first bed to the second bed?

A. About half an hour, 15 minutes.

Q. Half an hour or what?

A. 15 minutes. I'm not sure. I didn't have a watch with me.

Q. What happened during the time before you moved from [69] the first bed to the second bed?

A. I think they were asking everybody if there were illegal aliens and if they had identification with them that could prove that.

Q. Was the police or people from immigration that were doing that?

A. I don't remember who it was.

Q. Let me ask you this: Do you remember if the immigration people talked to you for the first time when you were sitting on the first bed or on the second bed?

A. No, I don't.

Q. You didn't—strike that.

Did you have any physical contact with any of the police officers while you were in the garage?

A. What do you mean by physical contact?

Q. Did any of them touch you or pick you up or move you in any way?

A. No.

Q. Other than when they put handcuffs on you and when they took the handcuffs off of you, did any of the officers have any physical contact with you?

A. No.

Q. Were you wearing a watch that day?

A. No.

Q. Was there any kind of clock or anything in the garage [70] that helped you judge the time?

A No.

Q. Did you have any conversations with the officers in the bedroom, in your bedroom while you were still in the bedroom?

A. Just I remember him asking my name and my date of birth and where I was from. And he asked me if I was a legal alien too.

Q. That was the first officer in the bedroom, correct?

A. Uh-huh, yes.

Q. And could you see his face?

A. Yes.

Q. Could you make out what he looked like?

A. I would remember back then but I can't remember now.

Q. Was it so dark in your room that you couldn't see what he was wearing?

A. What room?

Q. Your bedroom. Did you understand that we were just talking about your bedroom?

A. No. I thought you were talking about the garage.

Q. Okay. Well, let's back up then. While you were in your bedroom with the first officer, did you have any conversation with that person?

A. No.

Q. Nothing was said by you or him other than—strike that.

Was anything said by the officer at any time while he [71] was in the room?

A. Other than to stand up and turn over and put my hands behind my back.

Q. Nothing else was said.

A. No.

Q. How about with the officers in the garage, did you have any—strike that—the officer in the garage, did you have any conversation with the officer in the garage?

A. Just what I said already about him asking my name and where I was from.

Q. All right. Did you ever complain to the officer about the handcuffs being too tight?

A. Yes, I did.

Q. Did you tell him specifically they were too tight?

A. Yes. Let me-think about it. Yes, I think I did. Can I say something?

Q. Yes, please.

A. I also asked them why he couldn't take them off.

Q. But as you sit here today, do you remember specifically telling the officer that the handcuffs were too tight?

A. I don't remember that.

Q. Do you remember any conversation with the officer about the handcuffs other than asking him why they had to stay on?

A. No.

Q. Do you remember which bed you were sitting on when the [72] video was taken?

A. I think it was the second bed.

Q. And do you remember the officer that took the video or the person that took the video?

A. I think it was a lady with curly hair.

Q. Did she talk to you at all?

A. No.

Q. At some point you were taken back to the living room; is that correct?

A. Yes.

Q. And the handcuffs were taken off?

A. In the living room, yes.

Q. Do you recognize either of the two officers that are seated here at the table with me?

A. No, I don't remember them.

Q. Do you have any recollection of talking to the officer that's seated at the far end of the table whose name is Muehler?

A. No.

Q. But some officer in the living room described to you the procedure that you could go through to get the city to come out and repair the damage to your house; is that correct?

A. What do you mean by describing?

Q. Did they tell you what to do, who to talk to, how to go about the process?

A. No. He just told me that I needed to talk to the City of [73] Simi Valley and they would replace all the stuff for me.

Q. Now, as you sit here today, as I understand it, you cannot recognize or recall the officer who you say broke the door in the converted bedroom; is that correct?

A. Yes.

Q. And you looked at the pictures of the officers here and you were not able to pick it out?

A. No. I can't remember their faces.

Q. Okay. Do you remember at your deposition that you looked at the picture of Officer Allegra and said that he was the officer that broke the door; do you recall that?

A. I remember picking some of the police officers that I remembered. But right now it's been so long that I can't remember their faces.

Q. My question is: When your deposition was taken, were you certain at that time when you looked at the picture of Officer Allegra that that was the officer that broke the door?

A. Yes, I believe it was.

Q. Can you describe for me exactly what Officer Allegra did with that piece of door that you have told us about?

A. There were pieces of the door outside. And he picked it up. He threw it back on the door and he started kicking it with his feet and saying that he liked to broke that kind of material, that it was cool and that it felt like it was cardboard.

[74] Q. Did the piece break up into smaller pieces?

A. I think so.

Q. And the piece was originally laying on the floor outside of the bedroom; is that correct?

A. Yes, it was.

Q. He picked it up and threw it back into the bedroom; is that correct?

A. Not in the bedroom. On the floor.

Q. So he picked it up off the floor and threw it back onto the floor?

A. Yes.

Q. And then started kicking it?

A. Yes.

Q. And exactly what did he say?

A. He said I like to break this kind of material. It's cool. It feels like cardboard.

Q. And you remember that.

A. Yes.

Q. And you saw this while you were seated on the first bed in the garage; is that correct?

A. Yes.

Q. The reason that you had locks on most of the cupboards and so on in your house was because you didn't trust your tenants; is that correct?

A. Yes.

[75] Q. The boxes that were in the living room, you indicated that those boxes contained clothing that was going to be donated to a charitable cause; is that correct?

A. Yes.

Q. Do you know why Mr. Romero would have had a baseball bat in one of those boxes, if he did?

A. No.

Q. The door into your bathroom, —strike that.

The bathroom I take it was left open for people to use?

A. Yes.

Q. Was the door into the bathroom unlocked the day the officers came out and served the search warrant?

A. Yes.

Q. Was the door into the bathroom broken?

A. No.

Q. You said when you moved into the house you were 14 years of age?

A. Uh-huh, yes.

Q. It's your recollection that the converted bedroom which is this little bedroom here on the porch (indicating), that was there when you moved in?

A. Yes. You said that I was 14. I was 16 when I moved into the house.

Q. I'm sorry.

A. Yes.

[76] Q. So you were 16 but the porch was still there, correct, when you moved in?

A. Yes.

MR. NYE: I'd like to read from the witness' deposition, Page 39, Lines 4 through 8.

THE COURT: 39?

MR. NYE: Page 39, Lines 4 through 8.

THE COURT: Okay.

MR. MULLER: No objection.

MR. NYE: "THE WITNESS"—

THE COURT: Okay, wait a minute. You'd better ask the question that preceded the answer that she gave.

MR. NYE: All right. We'll go back to Page 38 then. Let me see here.

THE COURT: Go back to Page 38 and it's Lines 11 to 13.

MR. NYE: "Question: From the time that you arrived in the garage to the time that they called immigration, did you hear any of the officers say anything?

"Answer: Just the sounds that they were making moving things around in Ray Romero's room. And the guy that I told you that he was breaking the door at the room that my dad made on the patio."

MR. NYE: I have no further questions.

THE COURT: Okay. How long will your redirect be?

MR. MULLER: I think it's going to be very short, Your [77] Honor.

THE COURT: Okay. Let's finish that and then we'll take a morning break, ladies and gentlemen.

REDIRECT EXAMINATION

BY MR. MULLER:

Q. To the question of identifying that officer who broke the piece of the door, do you remember when your deposition was taken in this case?

A. No, I don't.

Q. Do you remember if it was a long time ago?

A. I know it was a long time ago.

Q. Do you remember it was about a year and a month after the search on February 3rd, 1998?

A. I don't know that it was exactly a year and some months.

Q. Well, was your memory better, was your memory of the incident better about a year and a month after the incident?

THE COURT: Better than it is today?

BY MR. MULLER:

Q. Than it is today.

A. Yes, it was better back then.

Q. The bathroom door, did that have a padlock on it?

A. No.

Q. Was that usually left shut or usually left open?

A. It was usually left open.

Q. When you were in the garage, did you ever see any other [78] officers come into the garage briefly and leave it?

A. Yes, all the time.

MR. MULLER: I don't have any further questions.

THE COURT: Okay. Thank you. You can step down, Ms. Mena.

THE WITNESS: Thank you.

THE COURT: Now, we'll take a 15-minute break at this point, ladies and gentlemen. I will see you back in 15 minutes.

(JURY EXCUSED)

THE COURT: Everyone may be seated. Counsel, one of the jurors and I'm not even sure who, I'll ask the clerk to tell us—

THE CLERK: Number 7.

THE COURT: All right. Juror Number 7 handed a note to the clerk and I'll read it. "Language problems, question, question, question, open against vs. with padlocked equals closed, without padlock equals open. Was door wide open, question, or was door without padlock, question." I construe this note to be an indication that this juror thinks there may have been some uncertainty about the questions and answers that were given presumably by Ms. Mena.

I have not, as you know, preliminarily instructed the jurors as to notes. I will tell them that the only way they can communicate with the court is by a note. A juror, I'm not sure if it was the same juror but presumably it was, started to

* * * *

[150] one another, I had no idea.

Q. Well, did you have any belief that Ray Romero was related to the people who lived on Patricia Avenue?

A. I had no idea of knowing one way or the other.

Q. Well, weren't you, didn't you go over to Ray Romero's family home and talk to him—excuse me, talk to his family on Cimmaron?

A. I talked to his mother and brother, yes.

Q. And when you talked to them, didn't they indicate to you that the Patricia Avenue address was what they termed a poor house where multiple unrelated people or multiple parties lived?

A. As I stated a minute or two ago, they informed me that multiple individuals lived at that residence.

Q. Okay. And they never said oh, you know, he's living there with his cousins or he's living there with his father or living there with a brother. They never said that, did they?

A. No.

Q. So wasn't it your natural conclusion that Raymond Romero was living at Patricia Avenue with people unrelated to him and that in general this poor house that it was described, as Patricia Avenue was described, was a place where unrelated people were renting rooms?

MR. NYE: Objection; compound.

THE COURT: Sustained.

BY MR. MULLER:

* * * *

[162] Q. Are you differentiating actual sit-down meetings from other types of meetings?

A. Well, a meeting to me is something formalized.

Q. Well, did you have seven or eight informal meetings with people in preparation for the search warrant service?

A. I believe I met with numerous individuals several times, yes.

Q. Well, do you recall meeting with Officer Lappin seven or eight times before the search warrant service?

A. I'm sure that's easily yes.

Q. Cimmaron Avenue was the other home that was searched, the Romero family home; is that right?

A. Yes.

Q. And you knew that Raymond Romero who was the dangerous suspect might be at the Cimmaron address; is that correct?

A. I had no way of knowing which address he would be at.

Q. Right. And I didn't say that you did. I just said you knew he might be there; is that right?

A. Yes.

Q. You called for a soft knock at Cimmaron. What is a soft knock?

A. A soft knock is just like it sounds. You go up to the front door, knock or ring the doorbell and wait for a response.

Q. Now, when you did the search at Patricia Avenue, did you have any information that anyone who lived at the residence [163] other than Ray Romero was involved in the drive-by shooting?

A. I'm sorry, at the Patricia address?

Q. Patricia, yes.

A. No.

Q. What were your duties in regards to the search of Patricia Avenue?

A. My job as the case agent was to make sure that everyone had search assignments in conjunction with officer, at that time Officer Brill's direction, and numerous other duties.

Q. Okay. And as case agent, did the ultimate control of officers in the area fall on you?

A. The ultimate control?

Q. Yes.

A. The ultimate control goes to a supervisor.

Q. All right.

MR. MULLER: I would like to read from his deposition, Page 26, Lines 4 through 5.

MR. NYE: I would request that the entire paragraph be read, Your Honor.

THE COURT: Yes, it will be. And you can't read mid-sentence much less mid-paragraph, Mr. Muller.

MR. MULLER: Okay. So I'll start at Line 1, Your Honor?

THE COURT: Yes.

BY MR. MULLER:

[164] Q. "Answer: I was the case agent on scene where Sergeant Chambers, Lieutenant Thomas, I believe Captain Wright at the time of the incident when the actual search warrant was served, as I was the case agent, the ultimate control of officers in the area fell on me."

So it that correct that the ultimate control of officers in the area fell on you?

A. For searching assignments and the like, yes.

Q. You were in charge of the search.

A. I was in charge of directing individuals along with Officer Brill.

Q. During the search.

A. Correct.

Q. All right. After SWAT had cleared Patricia Avenue, what did you do?

A. After SWAT had cleared Patricia Avenue, I entered the residence and ascertained if, number one, anyone was hurt whether on the entry team or any individuals inside and ascertained if everything was Code 4 which means everything was calm and the risks were minimized.

Q. And after that, at some point you assigned search teams or was that Officer Brill who assigned the search teams?

A. I believe it was Officer Brill and I stood by while that happened.

Q. Did you do a walk-through of the home before assigning [165] the search teams—or excuse me, before Officer Brill assigned the search teams?

A. Yes.

Q. And during that walk-through, did you determine which room was being occupied by Ray Romero?

A. No.

Q. Did your walk-through occur before or after the first segment of the video tape was shot?

A. My walk-through occurred before the video tape was shot.

Q. How much before or how long was it before the video tape was shot that you made your walk-through?

A. I assume a couple of minutes.

Q. Now, when you made your walk-through, did you go into the pink room and see clothes that you would associate with a young man?

A. No, sir.

Q. Did you see a calendar on the wall with soccer players on it?

A. No. My walk-through consisted of merely walking from room to room.

Q. All right. Well, when you went into the pink room, did you see that?

A. No.

Q. When you went into the first bedroom, the one that's been identified as the Mena bedroom on the diagram, did you see that [166] it was full of women's clothes?

A. I saw it was full of clothes and other items.

Did you notice cosmetics and perfumes on a table in that room?

A. I noticed items on, I assume it was a dresser.

Q. When you did your walk-through, did you notice refrigerators—excuse me, a refrigerator in the Mena bedroom?

A. Yes.

Q. Did you notice a refrigerator in the pink bedroom, the Romero bedroom?

A. At the time I did the walk-through? No, I did not.

Q. Did you notice a refrigerator in the converted bedroom or what's been described as the converted bedroom? Let me refer to it.

A. I know which one it is. And at the time I don't believe I made any observation. I don't recall.

Q. Did you do any walk-through of the trailers or the mobile homes that were in the back of the residence?

A. Walking through actually as in entering them? No. I walked to them and stuck my head in the door.

Q. Okay. And when you stuck your head in, did you see that the mobile home was a separate unit with its own bathroom and stove, oven—well, probably not an oven but its own bathroom and stove and sleeping area?

A. I observed there was a camper.

[167] Q. So it was a typical camper with all those things in it.

A. It was a camper, yes.

Q. All right. After you did your walk-through, you then assigned or Officer Brill then assigned search assignments. At the time that Officer Brill made the search assignments, did you know which room was Romero's?

A. No, I did not know.

Q. Did you have a belief as to which room was Romero's when Officer Brill made the search assignments?

A. I don't believe so at the time, no.

Q. How long from the start of the search were you informed that Ray Romero's room had been located?

A. I believe it was 10 to 15 minutes.

Q. So pretty quickly after the search started, you knew which room was inhabited by Romero.

A. It was within 10 to 15 minutes.

Q. Did you have enough officers to search every room simultaneously?

A. I believe we brought the adequate number of personnel.

Q. No. My question was: Did you have enough officers to search each room simultaneously?

A. I believe so, yes.

THE COURT: Okay. We'll take a break now and resume tomorrow precisely at 8:00 o'clock. I appreciate your punctuality this morning. And we will keep to the same schedule

* * * *

IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CASE NO. CV 98-8512-AHM

IRIS MENA, *et al.*,
Plaintiffs,

-v-

CITY OF SIMI VALLEY, *et al.*,
Defendants.

THE HONORABLE A. HOWARD MATZ,
JUDGE PRESIDING

REPORTER'S TRANSCRIPT OF PROCEEDINGS
LOS ANGELES, CALIFORNIA
FRIDAY, JUNE 15, 2001

LYNNE SMITH
OFFICIAL COURT REPORTER
UNITED STATES DISTRICT COURT
312 NORTH SPRING STREET
LOS ANGELES, CALIFORNIA 90012

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[5] Romero, you had your search team continue to search rooms inhabited by other people, correct?

A. Yes.

Q. After you entered the home initially, did you encounter any of the residents of the home?

A. Yes.

Q. And did you make any orders regarding the residents in the home?

A. Yes.

Q. What were they?

A. To have them moved to one central location.

Q. Did you order that they be placed in a secure area so they were not an interference to the searching officers?

A. Yes, that would be one central location.

Q. Right. So they wouldn't be an interference to the searching officers.

A. Correct.

Q. And that was the garage of 61A.

A. The garage, yes.

Q. And the residents, including Iris Mena, would not have been an interference to the officers because the garage was not inhabited and had already been searched when you placed them in there, correct?

A. The reason they were placed in there is because we had secured that area and we were not searching that area because it [6] was empty.

Q. Right. Well, you had made a cursory search and determined there was nothing in there, right?

A. I had done a walk-through.

Q. So at the point in time when you had placed Iris Mena in that security location where she couldn't be an interference with any police officers and after she had been identified and patted down, did you order her released from her handcuffs?

A. No, sir, I did not.

Q. Were you informed that same morning of the search that Ray Romero had been contacted at the Cimmaron address of his family?

A. I'm sorry. The question was sometime during that morning?

Q. Yes.

A. Or during the search.

Q. During the search. During the search.

A. I don't recall during the search, no. Sometime during that morning I was notified.

Q. I would like to refer you to Exhibit 12. Can you tell the jury what Exhibit 12 is.

A. It is a citation.

Q. And who is it to?

A. Raymond Romero.

Q. What kind of citation is it?

[7] A. It's for possession of less than ounce of marijuana issued at 2646 Cimmaron.

Q. And is this—this is a notice to appear, correct?

A. Correct.

Q. So this means Mr. Romero was not arrested on that date. He was just told that he had to appear in court for this marijuana citation some other date?

A. He was arrested. It's a non-custodial arrest.

Q. Right. Okay. What I mean by arrest is he wasn't taken into custody that day.

A. He was not booked.

Q. And I'm placing Exhibit 12 on the Elmo. Now, this citation and notice to appear was issued to Ray Romero at 8:30 a.m.; is that correct?

A. That's what it reflects. I was not there.

Q. But based on your experience as a police officer, the time listed on the citation would be the time that it was issued to the person.

A. Based on what I see on that citation that you've shown, that's the time, 8:30.

Q. So he would have been cited and released at 8:30.

A. Again, I was not there.

Q. Well, following normal police procedures when someone's issued a citation, he would have been cited and released at 8:30?

[8] A. I can't comment on Officer Juliani's procedure which he'd done that particular day.

Q. Okay. I'm not asking you what he done. I'm just saying pursuant to normal police procedures, he would have been cited and released at 8:30 on that date, correct?

A. Again, I can't answer that.

THE COURT: When you cite someone in the normal course of your duties as a police officer in the normal course after you issue the written citation, do you release that person?

THE WITNESS: Yes. And I can comment on what I normally do.

THE COURT: Okay. Just answer my question. That's what you normally do, right?

THE WITNESS: Yes.

THE COURT: And when you normally do that, it's because you believe that's the normal procedure that Simi Valley police officers follow when they issue a citation. The citation gets issued, the individual gets released; is that correct?

THE WITNESS: Correct, the minute they sign it.

THE COURT: You may proceed, Mr. Muller.

BY MR. MULLER:

Q. So he was released. If normal police procedures were followed, Ray Romero was released at 8:30.

A. Again, normal police procedures, that is the second line, 8:30 would be going from left to right, top to bottom,

she wrote [9] 1st February; again normal police procedure, she wrote February and then she wrote 8:30. However long it took her to write the citation, explain the citation, the procedures for him to go to court and have him sign, again, I can't comment. But 8:30 is when she started the citation.

Q. Okay. So it would have been pretty soon after 8:30 that he would have been released?

A. Again, however long it took her to finish that citation and explain it to him.

Q. Do you know what time Iris Mena was finally released from her handcuffs?

A. I believe, I can only guess shortly after the hour and 45 minutes that we were there.

Q. It would have been after the video tape, the second video tape was taken which ended at 8:57?

A. Shortly thereafter.

Q. And your tactical plan indicated that the plan for people encountering the residents was that they would be detained, handcuffed until they could be patted down, their location noted, field interviewed and released by Officer Muehler or Officer Brill; is that correct?

A. Which page of my tactical plan on evidence Item 11 are you referring?

Q. Oh, okay. It would be Page—well, let me show you this blowup of 11A of your tactical plan. Or if you want to, you can [10] look in your plan and find this page.

THE COURT: What page is it? Just answer his question.

MR. MULLER: Well, I was looking through but I wanted to short circuit that. Page 5. I'm also putting up a blowup of Page 5.

BY MR. MULLER:

Q. Do you have Page 5 in front of you?

A. Yes, sir.

Q. So your plan was in regards to people who were encountered, they would be handcuffed and detained until they could be patted down, their location noted, field interviewed which basically consists of taking their name and other brief information about them, and released by Officer Muehler or Officer Brill; is that right?

A. That's correct.

MR. MULLER: No further questions.

THE COURT: Thank you.

Mr. Nye.

MR. NYE: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. NYE:

Q. Good morning, Officer.

A. Good morning.

Q. Officer, you've told us that you were instrumental in obtaining the search warrant for 1363 Patricia; is that correct?

* * * *

[14] A. Yes, sir.

Q. And were you also present during the call that was made, the 911 call to 1363 Patricia?

A. Yes, sir. I was not only present, I was on the line.

Q. And did you hear anything in Officer Brill's testimony that you considered to be inaccurate?

A. No, sir.

Q. Now, you had some information that Janero Gonzales either resided or had resided at 1363 Patricia; is that correct?

A. Yes.

Q. Where did that information come from?

A. That information had come from other contacts with West Side Locos gang members and information that we received from Ray Romero's brother and mother.

Q. All right. And did or does Mr. Gonzales, is he a member of the same gang as Mr. Romero?

A. Yes, sir, he is.

Q. Did that cause you any concern in regards to what you were doing in your investigation?

A. It causes me to heighten my, the threat level and it causes me as a gang expert to draw a conclusion or an inference if you will.

Q. And what was that?

MR. MULLER: Objection; unqualified opinion, 403.

THE COURT: Overruled.

[15] THE WITNESS: An individual place, if there is two rival gang members residing at the residence, me as a gang expert being court qualified, it would lead me to believe that, number one, has this become a safe house for West Side Locos and are there, and/or are there additional gang members living at that house in addition to the two that we've already identified.

Q. Now, you'd been to 1363 Patricia on two or three prior occasions?

A. Yes, sir.

Q. We've heard about a domestic violence incident and we've heard about a stabbing incident. What would be the other one if there was one?

A. Myself and Officer Brill had gone there just prior to the service of the search warrant wherein we had gone there at night and gone out on foot, walked the driveway if you will on the east side of the property separating 1363 and the adjacent property and we looked in the back yard.

Q. All right. You did not go inside the house on that occasion.

A. We did not step on the property, no.

Q. During the domestic violence and/or the stabbing incident, did you actually go inside the house?

A. Not on the domestic violence. On the stabbing I walked through the house and walked back out.

Q. And I believe there was some testimony on direct that you

* * * *

[27] notice on the front door?

A. Yes.

Q. Who was that?

A. It was assigned to Detective Lappin who obviously in turn assigned it to the Spanish speaker.

Q. Was there an assignment made for knock and notice anywhere in the rear yard?

A. Yes.

Q. Where was that—who was that?

A. Oh, who was that?

Q. I'm sorry.

A. I don't recall if it was Officer, at that time Officer Brill or Officer Adamsak. They were both Spanish speakers.

Q. And was there knock and notice to be given on the individual vans and motor homes that were in the rear yard?

A. Yes.

Q. And who was assigned that task?

A. Each individual detective that was at the location.

Q. Did you involve some other departments or agencies in this operation?

A. Yes, sir, I did.

Q. Which ones?

A. Immigration and Naturalization, INS/Border Patrol and Building and Safety.

Q. Why did you involve INS?

[28] A. Twofold. Part of my job in the special problem section was that I was the liaison with a wide variety of agencies including INS and code enforcement. In this particular instance, I notified INS that they might be needed

because West Side Locos were predominately and still are to this day predominately made up of illegal immigrants grants. [sic]

Q. And why did you involve building and safety?

A. I involved building and safety. Again, I didn't know whether or not I'd need them. I had them on call because I was liaison. I notified them to arrive at the scene because there was a wide variety of violations in regards to building codes and building safety.

Q. Now, did you give the direction to begin the operation at 1363 Patricia?

A. Yes, sir, I did.

Q. And did you coordinate that with the Cimmaron address?

A. Yes.

Q. And were you in a position to see whether or not knock and notice was given at the front door of Patricia Avenue?

A. Yes.

Q. Was it given?

A. Yes.

Q. Was it given much as has been described throughout the course of this trial?

A. Very loudly, yes.

* * * *

[31] A. 10 to 15 minutes.

Q. All right. Did that cause you to consider changing the search assignments?

A. Absolutely not.

Q. And why was that?

A. Because again, even though we had located the gang member's bedroom, we still don't know where in that residence he may have hidden something and again his relationship with the other occupants.

Q. Did you consider interviewing Ms. Mena to determine her relationship with Mr. Romero?

A. No.

Q. Why was that?

A. For a wide variety of reasons. Being that at this point it's not irrelevant but I don't know Ms. Mena. She seems like a very nice individual. I do not know the relationship again between her and Mr. Romero.

Q. If she had told you that she had no relationship with Mr. Romero, would that have altered your search pattern?

A. No, sir.

Q. Did you oversee the search?

A. Yes, I did.

Q. Did you see anybody doing anything that you thought was malicious?

A. No.

* * * *

[36] the wall and the cinder blocks falling.

Q. Was there any rebar that protruded after the cinder blocks fell?

A. No, sir.

Q. Now, in addition to documenting the damage in the report, was the damage also documented by photograph?

A. Yes.

Q. And you have seen Exhibit 52, have you not?

A. Yes, sir, I have.

Q. And do you know who took those photographs?

A. I believe our crime scene investigator Becca McConnell.

Q. And for what purpose were those photographs taken?

A. Twofold. To document the damage that we had done that day and basically to make sure that any additional damage that might come in later couldn't be attributed to us.

Q. The damage was also video taped; is that right?

A. Yes, sir, it was.

Q. Now, Iris Mena was detained during the course of this search, was she not?

A. Yes, sir, along with three other individuals.

Q. Were they all handcuffed?

A. Yes, sir, they were.

Q. Were they all kept handcuffed during the duration of the search?

A. Yes.

[37] Q. And is there a reason why that occurred?

A. Yes.

Q. Can you tell us what that is.

A. Yes. It's for our safety as well as the individuals that we encounter. They are much less likely, in my experience, they are much less likely to be involved and cause us to be involved in them. They are kept in a central location. They are, even though they're handcuffed, any discomforts they might have are addressed. And if an officer that had been watching them, if the individual had had a problem, they would have spoken to that officer and he would have come to me and I would have addressed it at that time.

The reason we don't unhandcuff a large group of people, because then it requires us to be, have numerous officers. We had two officers in that room watching four people. If we had unhandcuffed those people, I would have had between six and eight officers. It's unsafe and it prevents problems.

Q. Did one of the residents of 1363 Patricia identify him or herself to you as an illegal alien?

A. Not to me.

Q. To another officer?

A. Yes.

MR. MULLER: Objection; hearsay.

THE COURT: Sustained.

BY MR. NYE:

[38] Q. Did you enter the garage area at any time during the search?

A. While the search was being conducted? Yes.

Q. Yes. Did you see Ms. Mena while you were in the garage?

A. Yes, I did.

Q. Did she ever appear to you to be in any type of distress?

A. No, sir, none of them.

Q. Did she ever speak to you?

A. Not at that time, no.

Q. And your best estimation of the duration of the search is what?

A. One hour 45 minutes.

Q. And can you tell us what you base that on.

A. I base that on our arrival would have been at the front door. The knock and notice would have been at 7:00 a.m. and when we had left, Becca McConnell was the last individual that would have done the taping and that was 8:40 I believe.

Q. In her video we see some gloves scattered about the house, plastic gloves. Are those gloves that the officers used during the course of the search?

A. Yes.

Q. And do you know whether or not those gloves were retrieved before the last person left the house?

A. I would have been the last person and I would have picked them up along with the wide variety of evidence sticker backings [39] that we use.

Q. Did you do so?

A. Yes, I did.

Q. Did you see any of the officers that were present at 1363 Patricia do anything at all that you considered inappropriate on February 3rd?

A. No, sir.

MR. NYE: That's all I have, Your Honor.

THE COURT: Thank you.

Redirect examination by plaintiffs?

MR. MULLER: Yes, Your Honor.

REDIRECT EXAMINATION

BY MR. MULLER:

Q. When you were in the garage, did you speak to Iris Mena?

A. As stated, I don't believe so.

Q. So you never explained to her why she was being held when you went into the garage.

A. Not at that particular time, I did not.

Q. Your affidavit of probable cause didn't indicate which room was occupied by Raymond Romero, correct?

A. Did it specifically state which bedroom he had? No. I did not know which one.

Q. And do you understand that it's your duty to discontinue a search even if it's authorized by search warrant if you determine that there are separate units within a residence, is

* * * *

[44] Q. Did you see any doorbells on any of the rooms?

A. No.

Q. Any separate mailboxes?

A. No.

Q. Did you see any multiple addresses associated with the house?

A. No.

Q. Did any of the rooms have stoves in them other than the converted garage?

A. No.

Q. Any of the rooms have sinks in them?

A. No.

Q. Any of the rooms have a bathroom associated directly with it?

A. No.

Q. Any of the rooms have separate entries from the outside into the room?

A. No.

Q. Any of the rooms have a full-sized refrigerator as opposed to the little mini refrigerators that we saw?

A. One room.

Q. And that was Ms. Mena's bedroom?

A. Correct.

MR. NYE: Thank you.

THE COURT: I have a question, Officer. It's about [45] Something you told Mr. Muller earlier this morning when he asked you why you didn't question Iris Mena as to what if any relationship she had either to Romero or Gonzales. And you answered that you didn't know Ms. Mena and that was one of the reasons why; is that correct?

THE WITNESS: Yes, I didn't know the relationship.

THE COURT: Is it your practice when you're conducting investigations about reputed gang members to question people only if you know something about them or know the person to be questioned?

THE WITNESS: No, sir. The reason I was there that day was to do a search warrant, not an investigation.

THE COURT: Just answer my question, please.

THE WITNESS: Then I'll say no, not at that particular time.

THE COURT: In fact, it's common for a police officer in conducting an investigation to ask questions of someone that police officer never even saw before, correct?

THE WITNESS: Correct. When I'm doing an investigation. As stated, I wasn't.

THE COURT: All right. So the fact that you didn't know Ms. Mena and didn't know what her relationship was with either Romero or Gonzales, if you were folding ordinary practices, would not have prevented you from questioning her; is that correct?

[46] THE WITNESS: If I conduct an investigation, yes.

THE COURT: Thank you. Any further questions?

MR. MULLER: No, Your Honor.

MR. NYE: No, Your Honor.

THE COURT: All right. You may step down, sir. Please call your next witness.

MR. MULLER: Call Frank Ahlvers.

FRANK AHLVERS, SWORN

THE COURT: Please make sure, and this is to both counsel, that cumulative testimony and cumulative questioning be avoided.

THE CLERK: Please state your full name and spell your last name for the record.

THE WITNESS: Frank Eugene Ahlvers, A-h-l-v-e-r-s.

DIRECT EXAMINATION

BY MR. MULLER:

Q. Good morning, sir.
A. Good morning.
Q. What's your current assignment with the Simi Valley police department?
A. I'm a property crimes detective.
Q. And what was your assignment back on February 3rd, 1998?

A. The day of the search warrant?
Q. Yes.
A. I was a SWAT team member.

* * * *

[55] the Simi Valley police department?

A. I was the unit manager for the special operations unit and the SWAT lieutenant.
Q. So you were in charge of the SWAT team?
A. That's correct.
Q. How did you get to be in charge of the SWAT team?
A. It was an assignment basically. I applied for it. Went through a review process. The chief of police determined that I would be the SWAT lieutenant.
Q. And did you receive any training specifically in regards to being the SWAT lieutenant?
A. Yes, I did.
Q. What training did you receive?
A. It was really quite extensive. It was a basic 40-hour SWAT course. There was a basic 40-hour crisis negotiation course, then a number of advanced SWAT management courses, 40 to 80 hours.
Q. So you're very familiar with SWAT procedures.
A. I would like to think so, yes.
Q. I'm going to refer you to Exhibit 11 in the notebook, Exhibit 11 in the notebook.
A. Okay.
Q. And Exhibit 11 is the tactical operations plan regarding the search at Patricia Avenue; is that right?
A. That's correct.
[56] Q. Exhibit 11 is not a SWAT operational plan, is it?
A. Special operations unit tactical operations plan.
Q. It's not a SWAT plan though, is it?

A. The plan contains virtually all of the identical information of a SWAT plan. This is labeled special operations unit. It's very similar, comparable to one that would be entitled a SWAT plan.

Q. Would you look through the exhibits—.

THE COURT: Excuse me one second. Would you please remove the item from the Elmo. Thank you.

BY MR. MULLER:

Q. Would you look through that exhibit and see if it sets forth the duties of the different SWAT team members in regards to the incident at Patricia Avenue.

A. Yes, it does.

Q. It lists the duties of the SWAT team members in regards to the incident?

A. Yes.

Q. And can you show me where.

A. Yes. On Page 05, one, two, third paragraph down states:

> "A SWAT six-man entry team will clear the interior of the residence and secure any subjects. The SWAT team will clear only the interior of the residence to include the screened porch at the rear of the house. The SWAT team will not exit the residence and no [57] officers will enter the house until all clearing teams have provided a Code 4 to Officer Muehler."
>
> And this has been verified by Officer Muehler.

Q. Okay. Does it set forth the different duties of the SWAT team members, individual members?

A. Not specifically, no.

Q. Now, does that lead you to believe that there was a separate plan, a separate SWAT plan regarding Patricia Avenue?

A. No.

MR. MULLER: I would like to read from the lieutenant's testimony at Page 85, Lines 9 through 18.

THE COURT: You may do so.

"Question: Would you look through that and see if that exhibit sets forth the duties of the different SWAT team members in regards to the incident.

"Answer: I have already reviewed this with city's counsel and it does not.

"Question: Okay. And is that proper?

"Answer: It leads me to believe that there is a separate plan that we just don't have available to us that was written for the SWAT team."

Now again, would you look at Exhibit 11 and note, I'm going to specifically refer you to I believe it's Page 3. It has the list of personnel. Do you see that?

A. Yes.

* * * *

[60] MR. MULLER: Lines 22 through 25.

THE COURT: Through Page 14, lines what?

MR. MULLER: 1 through 11.

THE COURT: Hold on, please. You may do so.

BY MR. MULLER:

Q. Question: It would be consistent with Simi Valley police department policy not to have a SWAT operations plan for a SWAT-executed search warrant?

"Answer: No.

"Question: It's not consistent?

"Answer: No, it's not.

"Question. So it wouldn't be proper.

"Answer: It would not be consistent with policy. I, my assumption is that there was one. I don't have an independent recollection or the norm would be there would be an operations plan listing specific SWAT assignments."

BY MR. MULLER:

Q. Now, in executing a search warrant, is it standard operating procedure for the search team to place any residents in the living room or some place like the living room and handcuff all of them until it is determined, which ones might be disruptive?

A. Yes.

Q. And normally those who are uninvolved or non-violent will [61] have their handcuffs removed.

THE COURT: Is that a question?

BY MR. MULLER:

Q. Is that correct?

A. No.

MR. MULLER: I'd like to read from the deposition Page 36, Lines 21 through 25 and Page 37, Lines 1 through 15.

MR. NYE: Your Honor, I'd request that if that's going to be read that we read through Lines 21, not just Line 15.

THE COURT: You want to come through Line 21?

MR. NYE: Yes, Your Honor, please.

THE COURT: That's appropriate. You may read it but add to it the lines through Line 21.

MR. MULLER: Yes, Your Honor.

BY MR. MULLER:

Q. "Question: What would it be about their behavior that would cause you to handcuff them?

"Answer: Well, initially everyone is handcuffed. So let me withdraw my previous answer. Everyone is handcuffed until there's some determination made on the potential threats to the individual officers or the potential involvement. When the officers first go in, they don't know who the good guys are and who the bad guys are. Therefore, they're going to treat everybody and they're going to control everybody for [62] Their own safety.

"Once they're brought to a location and it's determined that they're uninvolved, the norm would be that the uninvolved people or the non-violent people, handcuffs are taken off and they're placed on a couch and they sit there until we're done with the search warrant.

"Question: Okay. And why would you take the handcuffs off uninvolved people once the determination is made that they're uninvolved?

"Answer: The understanding of the officers at the time, their professional judgment, their values."

THE COURT: Don't you want to continue through the next series of questions or maybe you should ask a question now to see whether you're entitled to.

BY MR. MULLER:

Q. To keep a cooperative person handcuffed would be unnecessary, correct?

A. Not necessarily.

MR. MULLER: I would like to read from Page 39—excuse me, Page 39, halfway through Line 24 through Line 25, Page 40, Lines 1 through 10 omitting the objection.

THE COURT: You're starting with Page 39, what line?

MR. MULLER: Halfway through Line 24.

THE COURT: You don't start midway through a question.

[63] MR. MULLER: All right. I'll start at Line 22.

THE COURT: Okay. Go ahead.

BY MR. MULLER:

Q. Okay.

"Question: Okay. I'm entitled to your knowledge as a police officer. I'm not telling you to second guess the investigators. What I'm saying is given a situation where an uninvolved person is not disruptive, does not show that they will be violent, does show that they are amenable to verbal commands, would it be improper to keep that person handcuffed for over two hours?

"Answer: I don't know that I would use the word improper. I would certainly believe that it would not be necessary given the specificity of the circumstances you've described."

Now, based on your training and experience, your position as the head of the SWAT team, would it be the responsibility of the case agent to make the determination as to who should be detained and how long they should be detained during a search?

A. Yes.

Q. And the case agent was Officer Muehler in this case?

A. Yes, I believe he and now Sergeant Brill, then Officer Brill were co-case agents.

MR. MULLER: No further questions.

* * * *

[66] MR. MULLER: Objection; lacks foundation.

THE WITNESS: No.

THE COURT: That objection I overrule.

THE WITNESS: None whatsoever.

BY MR. NYE:

Q. In fact—strike that.

Would you defer to the judgment of the officer in the field as to whether or not a person should or should not be handcuffed?

A. Absolutely.

Q. Do you think that you can sit here and determine whether or not something that occurred two or two and a half years ago was proper or not?

MR. MULLER: Objection; leading, lacks foundation.

THE COURT: It's leading. Sustained.

BY MR. NYE:

Q. What specifically was your involvement in the development of the tactical operations plan?

A. Essentially overall unit management and review approving was an ongoing discussion of the entire investigation.

Q. And in that regard did you work with Officer Muehler?

A. Yes, I did.

Q. And also Sergeant Chambers?

A. That's correct.

Q. Did you agree with the decision to use SWAT at this [67] particular location?

A. Absolutely.

Q. Why was that?

A. The potential for violence, the fact that we were searching for a weapon. We believed that there was a potentially armed individual at a specific location. He had already proven a proclivity for armed violence and that he

had fired a shot in a gang-related situation at another individual. It just made common sense. The basic premise behind using a SWAT team is to minimize the potential for a violent reaction by using an overwhelming force initially to discourage any violence.

Q. And did you review the tactical operations plan that was used?

A. Yes,I did.

Q. Did you make any changes to it that you recall?

A. Minimal if any. It was very well done.

Q. Was there any need at all for a separate SWAT operations plan in this particular operation?

A. No.

Q. You were at the scene on February the 3rd, you've told us.

A. Yes, I was.

Q. Who else was there from a supervisory level?

A. My immediate supervisor, Captain Dick Wright was there.

* * * *

[69] said at your deposition could be used at any trial of this matter?

A. Yes.

Q. And do you recall me admonishing you that for that reason you should give your best testimony at your deposition?

A. Yes.

Q. And in regards to the dangerousness of the people encountered on the morning of the search, the people who were actually there as opposed to the people that lived there, there were four people there; is that your memory?

A. I don't remember specifically how many were there.

Q. Do you remember any of the people there fitting the criteria for gang membership?

A. Do I remember anybody? I don't have that independent recollection, no.

MR. MULLER: Okay. No further questions.

THE COURT: Anything further?

MR. NYE: No.

THE COURT: I have a question for you.

THE WITNESS: Yes, sir.

THE COURT: You told Mr. Nye that—and I think this was a quote—you would defer to the judgment of the person in the field absolutely; do you remember saying that?

THE WITNESS: Yes.

THE COURT: Well, just because an officer is in the [70] field does not entitle that officer's exercise of judgment to go unreviewed, does it?

THE WITNESS: No, of course not.

THE COURT: In fact, your responsibility as a superior officer in the police department is to review the conduct in the field of subordinate police officers, right?

THE WITNESS: That's correct.

THE COURT: And if their conduct in the field reflects judgment that is poor, it's your responsibility to discipline them, correct?

THE WITNESS: That's correct.

THE COURT: And if the poor judgment is reflected in behavior that may violate the constitutional rights of citizens, that's also your responsibility to review, correct?

THE WITNESS: That's correct.

THE COURT: So you don't defer to the judgment of an officer just because he's the one on the spot who has the difficult decision in making a judgment call, do you?

THE WITNESS: No. I guess the point I was trying to make was that based on my knowledge and experience with the individual officers, my level of confidence with them, the fact that I believe they're professional police officers, I'm certainly not going to micro manage their minute-by-minute decisions.

If they decide that an individual needs to be [71] handcuffed and there's nothing that is obvious to me that a person shouldn't be, I'm going to accept their decision and not have to second guess everything they do.

Q. Okay. Well, what would cause you to conclude that the person should not be handcuffed or that if the person has been handcuffed, at some point those cuffs should be released?

THE WITNESS: What would make me conclude that they should be? I guess after—

Q. That the cuffs should be removed.

A. That it was very apparent that they were an uninvolved party to whatever we were doing at the particular time.

THE COURT: Okay. And one way of finding out whether they were an involved or an uninvolved party would be to ask them questions, right?

THE WITNESS: That's correct.

THE COURT: And it's perfectly common when officers are executing a search warrant and have taken into custody and handcuffed people who happened to be on the premises,

for those officers responsible for the execution of search warrant to question those people as to whether they're involved. That's common practice, isn't it?

THE WITNESS: At a certain point in time, yes, of course.

THE COURT: Nothing about the fact that you have a responsibility for executing a search warrant prevents you from [72] questioning the people who happen to be on the premises as to what if any involvement they have with the person who is being investigated, correct?

THE WITNESS: Yes, sir.

THE COURT: Thank you. Any other follow-up questions?

MR. MULLER: No, Your Honor.

THE COURT: You may step down.

MR. NYE: Your Honor—

THE COURT: Do you have any questions?

MR. NYE: Yes, please.

THE COURT: Please proceed.

FURTHER CROSS-EXAMINATION

BY MR. NYE:

Q. Lieutenant, have you reviewed the reports and documents in this particular case?

A. I believe I have reviewed most of them, yes.

Q. Did you see anything in any of the reports and documents that you reviewed to question the judgment of Officer Muehler at the scene on February the 3rd, 1998?

A. No.

Q. If you were to question a person detained at this particular location during this particular event and that person was to inform you that in his or her opinion they're not at all involved in what's going on around, would that in and of itself cause you to release the person from handcuffs?

[73] MR. MULLER: Objection; incomplete hypothetical and leading.

THE COURT: Overruled.

THE WITNESS: No.

THE COURT: Thank you.

THE COURT: All right. Anything further?

MR. MULLER: Nothing further, Your Honor.

THE COURT: Thank you, sir. You may step down.

MR. MULLER: We call to the stand—

THE COURT: Okay. We'll take a break now. We'll take a 15-minute break. We're not going to start at 10:00. We're going to start at five to 10:00. So it will be a 15-minute break using this clock as the standard. And remember the admonition during the break, please.

THE CLERK: All rise.

(JURY EXCUSED)

THE COURT: How are we doing on scheduling and are we going to be able to accommodate Mr. Chambers?

MR. MULLER: Absolutely, Your Honor. We're—Alan McCord is out.

THE COURT: You're not calling him to the stand.

MR. MULLER: Yes. I told him yesterday he's out. Garcia is out. Randy Adams is out. We've got Allegra, McConnell and Roy Jones left.

THE COURT: And Chambers.

* * * *

[77] A. Yes.

Q. Those three adult males that you saw at Patricia Avenue, did they fit the criteria for gang membership?

A. I wouldn't be able to tell you.

Q. Did any of those three adult males appear to be gang members?

A. As concerned to their mode of dress or how they appeared, no, they did not appear to be gang members.

Q. So none of them fit the criteria for gang membership that you've been trained in?

A. That I can't answer, sir.

THE COURT: Don't belabor the point. He said they didn't look to him like they were gang members.

MR. MULLER: Yes, sir.

BY MR. MULLER:

Q. Was there a confrontation on that date with the people in the house on Patricia Avenue?

A. I wouldn't classify it as a confrontation, no, sir.

Q. I would like to ask you to look at Exhibit 19, please.

A. (WITNESS COMPLIES)

Q. Do you have that in front of you?

A. Yes, sir.

Q. Do you recall people acting aggressively toward you on that date?

A. There was certainly a potential for aggressiveness, yes, [78] sir.

Q. All right. Let me refer you to Page 5 of Exhibit 19, specifically to the middle of the first partial paragraph and see if that refreshes your recollection as to whether anyone acted aggressively towards you on that date.

MR. NYE: What's the reference again, counsel?

MR. MULLER: I'm asking him to look at the—let me count it down. The one, two, three, fourth full sentence of Page 5.

BY MR. MULLER:

Q. Does that refresh your recollection that people acted aggressively towards you on that date?

A. Well, sir, I didn't write this report. So this is the other officer's opinion.

Q. Right. I'm just asking you if it refreshes your recollection.

A. No, my independent recollection is fine.

Q. What's that?

A. My own independent recollection of this event, this doesn't help me at all.

Q. Okay. So do you recall anybody acting aggressively towards you on that date?

A. The three males that were there as described in the report, when Officer Lamb went to take Mr. Mena into custody, they stood up and starting walking towards us and they were [79] going to try to interfere.

Q. So you would agree that that's acting aggressively towards you.

A. I would agree.

Q. Okay. And did that behavior anger you?

A. No.

Q. Did you feel any animosity at all towards the people who lived on Patricia Avenue when you went and took part in the search warrant service on February 3rd, 1998?

A. No, sir. The three subjects did what I asked them to do that night.

Q. Well, what was your role during the search warrant service?

A. I was a containment officer.

Q. Did you ever enter the home?

A. Yes, I did.

Q. Did you ever come into the area of this converted bedroom that's indicated in Exhibit 61A?

A. I did have to walk by that room, yes.

Q. Did you ever note damage to a door there?

A. Yes, sir, I did.

Q. Did you ever pick up a piece of the door?

A. No.

Q. Did you ever kick a door there?

A. No, sir.

[80] Q. Did you ever make any remarks about the door that was there?

A. No, sir.

Q. Did you ever break a door there at the converted bedroom?

A. No, sir.

MR. MULLER: No further questions.

THE COURT: Go ahead, Mr. Nye.

CROSS-EXAMINATION

BY MR. NYE:

Q. Good morning, Officer.

A. Good morning, sir.

Q. The criteria for a gang member, is that something you can just look at somebody and determine whether or not they fit the criteria?

A. No.

MR. MULLER: Objection; leading.

THE COURT: Overruled.

BY MR. NYE:

Q. Now, you had been out to 1363 Patricia Avenue in 1997; is that correct?

A. Yes, sir.

Q. And that was a domestic violence call?

A. That's correct.

Q. And Mr. Mena was arrested on that date?

A. That is correct.

* * * *

[92] went into the home on Patricia Avenue?

A. I don't know.

Q. Now, back at this, the other call that you had at Patricia Avenue, in addition to Lamb, Officers Muehler and Brill were also present during that call; is that your memory?

A. I remember Officer Muehler being there.

Q. And you said you didn't connect the two locations until the date of the search?

A. That is correct, sir.

Q. Were you ever present at any briefings regarding the search?

A. The morning briefing just prior to the search, yes.

Q. And did you ever hear Lamb, Muehler or Brill talk about that prior visit that you had had to the location during that briefing?

A. No, I did not.

Q. Now, if you were, if someone were sitting on the—referring to Exhibit 61—if someone were sitting on this bed here on the north wall of the converted garage, could they have seen across to the front or in front of the converted bedroom?

A. If somebody was sitting there?

Q. Yes.

A. There wasn't anybody sitting there.

THE COURT: Just answer the question as to whether someone was sitting there.

[93] THE WITNESS: Well, as long as the door wasn't closed and no other officers or other people were standing in the way, they could probably see.

BY MR. MULLER:

Q. And do you recall seeing a portion of the door that had been taken off in this area right in front of the converted bedroom when you walked by there a couple of times?

A. You're moving around. I don't know which door you're talking about, sir.

Q. Well, do you remember a broken door in front of this converted bedroom that's listed on Exhibit 61A? A broken door right in this area in front of it.

A. Where the name Lappin is, is that where you're referring to?

Q. Around there where Lappin is.

A. No.

MR. MULLER: No further questions.

MR. NYE: Just briefly, Your Honor.

RECROSS-EXAMINATION

BY MR. NYE:

Q. Officer, you were outside for 20 or 30 minutes before you went into the house; is that correct?

A. That's correct, sir.

Q. And it was raining outside?

A. It was pouring.

[94] Q. Were you standing on concrete or in mud?

A. Standing on a dirt driveway.

Q. Did your feet get dirty?

A. Yes, sir.

Q. If you had gone into the house and kicked something and stomped on it, would you expect to have seen some dirt or mud from your shoes on that object?

A. Yes I would.

MR. NYE: Thank you.

THE COURT: Okay. Thank you very much, Mr. Allegra. You can step down.

THE WITNESS: Thank you, sir.

THE COURT: Please call your next witness.

MR. MULLER: Yes. Rebecca McConnell.

REBECCA MC CONNELL, SWORN

THE CLERK: Please state your full name and spell your last name for the record.

THE WITNESS: Rebecca McConnell, M-c-C-o-n-n-e-l-l.

DIRECT EXAMINATION

BY MR. MULLER:

Q. Good morning, Ms. McConnell.

A. Good morning.

Q. What is your position with the Simi Valley police department?

A. I'm the crime scene investigator.

[95] Q. Are you a sworn employee or a civilian employee?

A. Civilian.

Q. You were assigned a task during a search warrant service on February 3rd, 1998?

A. Yes.

Q. And what was that task?

A. I was to video tape a search warrant.

Q. And when you say video tape a search warrant, you were supposed to video tape before the search was done and then do an video tape after the search was completed?

A. Yes. My purpose is to show the condition of the residence prior to searching and then the way it's left after the search is completed.

Q. And what time did you get to Patricia Avenue if you recall?

A. A short time before 7:00.

Q. And what time did you, if you recall, did you get inside of Patricia Avenue?

A. I believe it was—inside the residence?

Q. Yes.

A. About 7:15, 7:10, 7:15. That's an approximate. I don't have a clear recollection.

Q. And you did two video tapes of the residence; is that right?

A. One video tape but two separate tapings.

[96] Q. Okay. Now, in the first taping I note—you've viewed the tape, haven't you?

A. Yes.

Q. And do you know there's no time stamp on the first segment of the video tape?

A. Correct. I don't have the time at the beginning of the tape.

Q. Why is that?

A. I failed to turn it on. The buttons on the camera, there are two buttons, one for the date, one for the time. You can't show them both at the same time. I usually hit the date button and then switch to the time and then take them off so you have the full screen. And I just failed to hit the time button.

Q. Okay. And do you know if the time code on the video tape camera was accurate?

A. Yes.

Q. Do you recall what time your second video tape segment ended?

A. It was just before 9:00 a.m.

Q. How long were you at the residence total?

A. About two hours.

Q. Are you sure it wasn't two to three hours?

A. No, it was two hours.

Q. From the time that you pulled up to the time that you left, how long was it?

[97] A. About two hours.

MR. NYE: I'd like to read from the deposition, Page 25, Lines 12 through 15.

THE COURT: All right. You may do so.

MR. MULLER: I'm sorry. I have actually 10 through 15, Your Honor.

THE COURT: All right. You may do so.

BY MR. MULLER:

Q. "Question: How long had you been at the residence?
"Answer: Two to three hours I think.

"Question: How long—let me withdraw that. How long had you been at the location from the time that you pulled up until the time that you left?

"Answer: That would have been two to three hours."

And were there still officers at Patricia Avenue when you left?

A. Yes.

MR. MULLER: No further questions.

CROSS-EXAMINATION

BY MR. NYE:

Q. Good morning.
A. Good morning.
Q. How long have you been with the Simi Valley police department?
A. It will be 14 years in August.
[98] Q. And you've been a crime scene investigator that entire time?
A. No.
Q. What else have you done for them?
A. I started out as a police aide.
Q. What are the duties and responsibilities of a crime scene investigator?
A. My main responsibility is all the evidence documentation, gathering and processing it at major crime scenes.
Q. Your testimony was that you arrived at the scene at about 7:00 a.m.?

A. Just prior to 7:00 a.m.
Q. All right. And when your deposition was taken, had you reviewed the video to determine what the time was when you concluded your video?
A. No, I had not. And in fact, in the deposition a little later on I state I wasn't sure about the time and I had to review the tape to remember that.
Q. All right. And having reviewed the tape, are you certain now that you were there for two hours and not three hours?
A. Yes.

MR. MULLER: Objection; leading.

THE COURT: Overruled.

BY MR. NYE:

Q. And the purpose of the video tape is what?
[99] A. To document the condition of the residence prior to searching the rooms and how it is left after the search is completed.
Q. All right. And did you also take some still photographs while you were there?
A. Yes.

MR. NYE: May I approach the witness, Your Honor.

THE COURT: You may.

BY MR. NYE:

Q. Let me show you Exhibit 52 and ask you if you recognize those photographs?
A. Yes.
Q. Are those the photographs that you took?
A. Yes.
Q. And what was the purpose of taking the photographs depicted in Exhibit 52?

A. The same as the video, to docket the condition, any damage that is incurred in the serving of the warrant.

Q. As part of your video taping, you went out into the garage towards the end and video taped the garage.

A. Yes.

Q. Do you recognize Ms. Mena here?

A. No, I don't.

Q. Do you recall there being people in the garage when you did the video tape?

[100] A. Yes, I do.

Q. Did anybody say anything to you?

A. No.

Q. Did you hear anybody else say anything to any of the people in the room while you were doing the video taping?

A. No.

Q. In looking at your video tape, at the end we see here and there throughout the house rubber gloves. Did you see any rubber gloves while you were in house doing the second video tape?

A. Yes.

Q. Did you see—when you finally prepared to leave the house, did you see anything happening to those gloves?

A. Just prior to my leaving, some of the people that were left there were putting them in a pile, cleaning them up so that they weren't left.

Q. How would you describe the condition of the house during the first video tape?

A. The condition of the structure or the belongings in it?

Q. The belongings.

A. The belongings. The main room inside the front door was sparsely furnished. There were a few boxes. One of the bedrooms was extremely cluttered, had a lot of furniture, a lot of belongings. There was one bedroom that was empty and one that just had some furnishings.

[101] Q. The one that was extremely cluttered and had a lot of belongings, would that have been the first bedroom off the right?

A. That's correct.

MR. NYE: Thank you. I have no further questions.

MR. MULLER: No questions, Your Honor.

THE COURT: I have a couple questions.

The video that had been played here in the trial, Ms. McConnell, doesn't have any audio. Does the camera and video equipment that you used that day have audio capacity?

THE WITNESS: It has that capacity, yes.

THE COURT: Did you not turn on the audio?

THE WITNESS: The only time I use audio is if I'm video taping an interview.

THE COURT: Just tell me whether you did that day.

THE WITNESS: No, I did not.

THE COURT: And the reason is why?

THE WITNESS: I don't use the audio under that capacity.

THE COURT: Why not?

THE WITNESS: Because I'm showing a condition. I don't want people to be intimidated by the camera being there. So I shut it off so if anybody wants to have conversations, they may.

THE COURT: All right. If there were statements being made by police officers that might have a bearing on how [102] reasonable was their conduct, if the audio were on, that would be a way to capture whatever those statements may have been; is that correct?

THE WITNESS: I suppose so, yes. Usually when I'm walking through with the camera, everybody's quiet. Because like I say, a camera intimidates people and they don't want to be captured on tape.

THE COURT: Okay. And the intimidation factor would apply to all kinds of people, both civilians and law enforcement officers?

THE WITNESS: Yes. The residents of the house, the law enforcement officers or civilians. Anybody. I don't like being video taped.

THE COURT: Okay. Thank you.

MR. MULLER: No questions.

THE COURT: You may be excused. Thank you.

Please call your next witness.

MR. MULLER: Yes. Your Honor, I'd like to briefly recall Iris Mena to the stand.

MR. NYE: Excuse me. There is one officer waiting outside. Are you aware of it?

MR. MULLER: I will call the other officer first if that's the preference.

THE COURT: Yes, call the other officer first.

ROY JONES, SWORN

* * * *

[112] were several officers present. I know he was one of them.

MR. MULLER: No further questions.

THE COURT: Thank you, Officer Jones. You are excused.

THE WITNESS: Thank you, sir.

THE COURT: Next witness, please.

MR. MULLER: Yes. I'd like to recall Iris Mena.

THE COURT: All right. I'll permit you to do so. Please step forward.

IRIS MENA, RECALLED

THE COURT: I remind you that you were previously sworn and you have an obligation to testify truthfully. Do you understand that?

THE WITNESS: Yes.

DIRECT EXAMINATION

BY MR. MULLER:

Q. Ms. Mena, just a few questions for you. There were four—three other people detained with you that day in the converted garage?

A. Yes.

Q. And who were they?

A. Shawn, Leticia and Carlos.

Q. Do you know approximately how old Carlos was at that time?

A. I think a little bit after 40.

Q. And do you know approximately how old Shawn Hynes was at [113] that time?

A. I don't know. No, I can't tell you.

Q. And what about Leticia, do you know approximately how old she was?

A. She was probably like 50.

Q. And did any of those people act in any threatening way towards the police as they sat there in the converted garage?

A. They never did.

Q. And how long were you held there in handcuffs for the total of that search?

A. I would say like two to three hours.

Q. When—at some point in time you moved back to your parents' home after you and your husband separated; is that right?

A. Yes, I did.

Q. And when was that?

MR. NYE: Your Honor, I'm going to object. This has all been asked and answered in the original questioning.

THE COURT: Sustained.

BY MR. MULLER:

Q. When you moved back in with your parents, was Janero Gonzales living at your home?

A. No, he wasn't.

Q. And was that in 1997 when you moved back with your parents?

[114] A. It was like October 1997.

Q. When you were brought out of your bedroom initially when the man came in with the gun pointing at you and handcuffed you, after you got outside your bedroom door, did you see any police officers?

A. Yes. There were like two to three police officers dressed in black holding like a big long tube to get into the other rooms on the hallway.

Q. When you say "a big long tube," can you describe it any better than that.

A. They were holding it from the top and it was like, I forgot the name, how you guys called it over here.

Q. I just want to know what you saw.

A. It was like a big black pipe that they were holding.

Q. Did it have anything on top of it?

A. Like handles. They were holding it like this (indicating).

Q. Okay. Did you see them doing anything with that metal thing?

A. No. Because I asked them what was going on when I saw that and they told me to shut up and keep moving.

Q. Okay. And where did you go after you saw the officers with that pipe thing?

A. To the garage.

MR. MULLER: No further questions.

[115] THE COURT: Mr. Nye.

MR. NYE: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. NYE:

Q. Ms. Mena, you never testified before during your deposition about officers in the house with a pipe or a ram, did you?

A. I don't remember if I did.

Q. And you never testified before during your deposition that when you were brought out of your room that officers told you to shut up, did you?

A. I don't remember if I did.

MR. NYE: I have no further questions.

THE COURT: Okay. You may step down, Ms. Mena.

MR. MULLER: I have one question.

THE COURT: Go ahead.

REDIRECT EXAMINATION

BY MR. MULLER:

Q. Has hearing this evidence brought back memories of the incident, hearing people testify about it?

A. Yes, it did.

MR. MULLER: No further questions.

THE COURT: Okay. You may step down.

THE WITNESS: Thank you.

THE COURT: Please call your next witness.

* * * *

[117] factors and there's a witness who is, someone that the plaintiff wants to put on who can't be here until 12:00. And I'm going to permit the plaintiff to put that witness on at 12:00. So the plaintiff is not resting. Once a party rests, then that means that party is not permitted to put on additional evidence until the next stage, if any. But we are going to start with the defendant's case independent of the testimony that was previously elicited and for that purpose I'm going to permit Mr. Nye to call—who is it, Mr. Muehler?

MR. NYE: Officer Muehler.

THE COURT: Officer Muehler.

DARIN MUEHLER, RECALLED

THE COURT: I remind you, sir, that you're under oath and you have the obligation to testify truthfully.

THE WITNESS: Yes, sir.

DIRECT EXAMINATION

BY MR. NYE:

Q. Officer Muehler, you did not question Iris Mena while she was being detained in the garage; is that correct?

A. That's correct.

Q. If Iris Mena had told you that she was not at all involved with Mr. Romero, would that have changed your course of conduct that day?

A. Absolutely not.

THE COURT: I thought you asked him that. Yes, you [118] did. But go ahead.

BY MR. NYE:

Q. Why is that?

A. Because I was there to conduct a search warrant. She resided at the resi ce so the fact that she was involved with that particular residence, it would not have changed my behavior.

Q. Are there circumstances that would have caused you to take the handcuffs off of her on that date?

A. Yes.

Q. What would that have been?

A. Had she been the only occupant in that residence, had she been gravely disabled, had she been obviously pregnant, had she been elderly, those type of things, health concerns.

Q. Okay. Under the facts and circumstances that existed on February the 3rd of 1998, did you feel any need to remove the handcuffs from her during the detention?

A. Absolutely not.

MR. NYE: Thank you. That's all I have, Your Honor.

THE COURT: Mr. Muller?

MR. MULLER: No questions, Your Honor.

THE COURT: Okay. Thank you, Officer.

THE WITNESS: Thank you.

THE COURT: Okay. So you don't have any more witnesses, right, other than the one that's coming on Tuesday

* * * *

IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CASE NO. CV 98-8512-AHM

IRIS MENA, *et al.*,
Plaintiffs,

-v-

CITY OF SIMI VALLEY, *et al.*,
Defendants.

THE HONORABLE A. HOWARD MATZ,
JUDGE PRESIDING

REPORTER'S TRANSCRIPT OF PROCEEDINGS
LOS ANGELES, CALIFORNIA
TUESDAY, JUNE 19, 2001

LYNNE SMITH
OFFICIAL COURT REPORTER
UNITED STATES DISTRICT COURT
312 NORTH SPRING STREET
LOS ANGELES, CALIFORNIA 90012

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* * * *

[65] an incomplete hypothetical and misstates the witness' testimony.

THE COURT: Overruled. He can answer on his own.

THE WITNESS: I can't answer that question as you put it to me. There's not enough information.

BY MR. MULLER:

Q. Well, did you read his deposition?

A. Yes, sir.

Q. And did you read the part of his deposition where he discusses when it would be proper, when it would be necessary to keep a person handcuffed during a search?

A. I read his deposition that was dated June 15th of '99. I read it in its entirety. I don't have recall of everything that was in that deposition.

Q. Well, if Lieutenant Thomas testified at that deposition that normally those who are uninvolved or nonviolent will have their handcuffs removed during the search, would you disagree with his assessment of proper procedure?

A. I'm not sure you're giving me enough information to agree or disagree.

Q. Would you agree if Lieutenant Thomas testified that to keep a cooperative person handcuffed would be unnecessary?

A. Again, there's not enough information for me to comment on.

Q. Would you agree that all of the testimony that you ever read in this case indicated that Iris Mena was completely [66] cooperative during the search?

A. Yes.

Q. Would you agree that all the testimony that you read in this case indicated that Iris Mena never did anything threatening at all during the search?

A. Yes.

Q. Now, you indicated that someone who is detained during the service of a search warrant could be released after it was determined if they were part of the incident that was the cause for the search or any of the collateral investigation and after the location had been rendered safe; is that right?

A. Yes, sir.

Q. So the SWAT entry was made and the location was cleared of all suspects or residents of the location; is that right?

A. Yes.

Q. So that after SWAT came in and eight officers or was it six, six officers came in and went through the location, got everybody out, the location was safe?

A. Yes.

Q. At that point in time after Ms. Mena was handcuffed, she was taken to a garage, a converted garage where she was sat down with two officers; is that right?

A. That's my reading, yes.

Q. And at that point in time when she was taken to the garage, she could have been asked questions to determine if she [67] was part of the situation that caused the search or the collateral investigation that was involved in the search.

A. Could have, yes.

Q. There was nothing from preventing her?

A. I'm not—I don't know exactly when it could have happened. I wouldn't suggest it happens until the place has been rendered safe, the entire area has been rendered safe.

Q. You understand from the testimony that Ms. Mena is not brought out to the garage until SWAT has cleared the whole location, don't you?

A. Yes.

Q. So at that point in time that she's brought out to the garage, it's rendered safe.

A. Yes.

Q. All right. So knowing that once she's out in the garage, there's nothing preventing anyone from asking her questions to determine if she's related to this criminal investigation or the, what you call the collateral investigation.

A. And I don't think there's anything preventing that, no.

Q. And once someone determined that, it's your testimony that Iris Mena could have been released from her handcuffs; isn't that right?

A. I still stand by my testimony. Once you take care of all these other issues, yes, she could be released if she wasn't found to be involved in the original incident, in the collateral [68] incidents and perhaps she was willing to leave the location so that the officers could facilitate the search, they could release her, yes.

Q. Assuming that all those things were accomplished, they could have been accomplished within a couple of minutes after Iris Mena—not a couple of minutes, I don't want to exaggerate—within five or ten minutes after Iris Mena was brought to that converted garage.

A. That doesn't seem reasonable to me, sir.

Q. Well, you recall reading the tactical plan, don't you?

A. Yes.

Q. And the tactical plan was to field interview all of the residents of the home.

A. Yes.

Q. And a field interview is a very short, it's a very short document. It's actually a card, isn't it?

A. Oftentimes, yes.

Q. So filling out a field interview card would take a matter of five, ten minutes at most?

A. Oh, you could fill a so-called FI card out in a minute and a half if that was your goal to break the record as to how fast you could do it. But that doesn't comport with good police work under these conditions to be quite honest with you.

Q. Okay. Well, you would agree at the outside it should have taken 10 or 15 minutes after Iris Mena was brought into the [69] garage to determine, to ask her questions to determine whether or not she was involved in the crime that was being investigated at that time?

A. I disagree with that.

Q. Do you know if anybody asked Iris Mena any questions regarding the crime that was being investigated or the collateral investigation for the over two hours or approximately two hours she was held in that converted garage?

A. No, sir.

Q. You don't, you have never read any evidence that anyone did ask her any questions while she was in the garage?

A. I read a lot of material. I recall dialogue going on in her presence. I believe she testified to making certain announcements or responses. But I don't have a clear idea of what she said and for what purpose.

Q. You talked about opening, the need to open interior doors quickly.

A. Yes.

Q. Is using a hand-held ram one way to open an interior door quickly?

A. Yes.

Q. In fact, it's superior to using body parts?

A. It depends on the type of door. Rams defeat hard doors like exterior doors. They may be less effective on interior hollow doors. It's a judgment call.

* * * *

[83] would want to know those things. You would want to ask those questions but you would want to consider the nature of everything that is happening at the scene. That's apparent, so the desire to interrogate or interview may be put on hold until timing is better.

MR. MULLER: No further questions.

THE COURT: I have a couple of follow-up questions. I want to ask you about what's at issue in this case, which is reasonable and necessary conduct. You would agree that the standard in this case is not a standard of appropriateness as an expert would define it but whether or not the conduct was constitutional. Do you agree?

THE WITESS: I believe the court's focus, yes.

THE COURT: Do you recall constitutional conduct at all reasonable, correct?

THE WITNESS: I agree with that, Your Honor.

THE COURT: And do you think that one factor in determining whether something was reasonable would be whether or not somebody being handcuffed was short and small, would that be a reasonable factor?

THE WITNESS: No, that would not.

THE COURT: Would it be reasonable to determine how many people were present on the scene to determine whether or not their response would be necessary in the event handcuffs were removed?

[84] THE WITNESS: Yes.

THE COURT: In order to determine whether or not the person in handcuffs had some connection to the matter being investigated or the individual being investigated, would it be a reasonable thing to question that person?

THE WITNESS: Yes.

THE COURT: Any further questions, counsel?

MR. MULLER: No further questions.

MR. NYE: One moment.

(PAUSE)

MR. NYE: No further questions. Thank you.

THE COURT: Thank you very much.

THE WITNESS: Thank you, Judge.

THE COURT: Are there any additional witnesses?

MR. NYE: No, Your Honor. With that the defense will rest.

THE COURT: Thank you. Plaintiff is not going to seek to reopen; is that correct?

MR. MULLER: We are not seeking to reopen.

THE COURT: Ladies and gentlemen, the parties, both sides have rested. That means that the stage of the trial involving presentation of evidence is finished. We're going to take a 15-minute break. When we return, I will give instructions and explain the special verdict. We will then proceed to closing arguments. Please remember the admonition

* * * *

[97] This word that's missing is—or it's two words. It's "the officers" in the third line from the bottom.

Officers executing search warrants occasionally damage property in the performance of their duty. The destruction of property during a search does not necessarily violate the right under the Fourth Amendment to be free from unlawful searches. Only unnecessarily destructive behavior beyond that necessary to execute a search warrant effectively violates the Fourth Amendment.

Generally a police officer carrying out a search authorized by a warrant may be detain occupants of the residence during the search so long as the detention is reasonable. In determining the reasonableness of a detention conducted in connection with a search, you may look to all the circumstances, including the severity of the suspected crime, whether the person being detained is the subject of the investigation, whether such person poses an immediate threat to the security of the police or others or to the ability of the police to conduct the search, and whether such person is actively resisting arrest or attempting to flee.

A detention may be unreasonable if it unnecessarily painful, degrading, prolonged or if involves an undue invasion of privacy. A police officer is required to release an individual detained in contained with a lawful search as soon as the officers' right to conduct the search ends or the search [98] itself is concluded, whichever is sooner.

It's the duty of the court to instruct you about the measure of damages. By instructing you on damages, the court does not mean to suggest for which party your verdict should be rendered. If you find for plaintiff, you must determine plaintiff's damages. Plaintiff has the burden of proving damages by a preponderance of the evidence. This is true for each plaintiff.

Damages means the amount of money which will reasonably and fairly compensate a plaintiff for any deprivation of constitutional rights you find was caused by the defendant or defendants. You may consider the following: The nature and extent of any injuries or damage to property. Any mental, physical or emotional pain and suffering plaintiff may have experienced and which with reasonable probability will be experienced in the future. Your award must be based upon evidence and not upon speculation, guesswork or conjecture.

If you find for plaintiff but you find that he or she has failed to prove actual damages, you shall return an award of nominal damages not to exceed $1. You are not to award damages for any injury or condition from which plaintiff may have suffered or may now be suffering unless plaintiff has established by a preponderance of the evidence that such injury or condition was proximately caused by defendant's conduct as a result of the incident that occurred February 3rd, 1998.

* * * *

STATE OF CALIFORNIA-COUNTY OF VENTURA

SEARCH WARRANT AND AFFIDAVIT
(AFFIDAVIT)

[Filed Feb. 6, 1998]

Officer Darin L. Muehler, being sworn, says that on the
(NAME OF AFFIANT)
basis of the information contained with this Search Warrant and Affidavit and the attached and incorporated Statement of Probable Cause, he/she has probable cause to believe and does believe that the property described below is lawfully seizable pursuant to Penal Code Section 1524, as indicated below, and is now located at the locations set forth below. Wherefore, affiant requests that this Search Warrant be issued.

/s/ Darin L. Muehler 01/29/98,
(SIGNATURE OF AFFIANT) (DATE)

NIGHT SEARCH REQUESTED YES☐ NO ☒

(SEARCH WARRANT)

THE PEOPLE OF THE STATE OF CALIFORNIA TO ANY SHERIFF, POLICEMAN OR PEACE OFFICER IN THE COUNTY OF VENTURA: proof of affidavit having been made before me by /s/ Officer Darin L. Muehler that
(NAME OF AFFIANT)
there is probable cause to believe that the property described herein may be found at the locations set forth here and that it is lawfully seizable pursuant to Penal Code Section 1524 as indicated below by "X"(s) in that it:

☐ was stolen or embezzled
☒ was used as the means of committing a felony
☒ is possessed by a person with the intent to use it as a means of committing a public offense or is possessed by another to whom he or she may have delivered it for the purpose of concealing it or preventing its discovery,

☒ tends to show that a felony has been committed or a particular person has committed a felony,

☐ tends to show that sexual exploitation of a child, in violation of P.C. Section 311.3, has occurred or is occurring;

YOU ARE THEREFORE COMMANDED TO SEARCH:

SEE ATTACHED:

AND TO SEIZE IT IF FOUND and bring it forthwith before me, or this court, at the courthouse of this court. This Search Warrant and incorporated Affidavit was sworn to and subscribed before me this 29 day of Jan. 1998, at 1:49 A.M./ P.M. Wherefore, I find probable cause for the issuance of this Search Warrant and do issue it.

/s/ [ILLEGIBLE],
(SIGNATURE OF MAGISTRATE)
NIGHT SEARCH APPROVED: YES☐ NO ☐

Judge of the Superior/Municipal Court, Ventura Judicial District

STATE OF CALIFORNIA-COUNTY OF VENTURA

SEARCH WARRANT AND AFFIDAVIT
(AFFIDAVIT)

[copy] [sw027-98]

Officer Darin L. Muehler, being sworn, says that on the
(NAME OF AFFIANT)
basis of the information contained with this Search Warrant and Affidavit and the attached and incorporated Statement of Probable Cause, he/she has probable cause to believe and does believe that the property described below is lawfully seizable pursuant to Penal Code Section 1524, as indicated below, and is now located at the locations set forth below. Wherefore, affiant requests that this Search Warrant be issued.

/s/ Darin L. Muehler 01/29/98,
(SIGNATURE OF AFFIANT) (DATE)

NIGHT SEARCH REQUESTED YES☐ NO ☒

(SEARCH WARRANT)

THE PEOPLE OF THE STATE OF CALIFORNIA TO ANY SHERIFF, POLICEMAN OR PEACE OFFICER IN THE COUNTY OF VENTURA: proof of affidavit having been made before me by /s/ Officer Darin L. Muehler that
(NAME OF AFFIANT)
there is probable cause to believe that the property described herein may be found at the locations set forth here and that it is lawfully seizable pursuant to Penal Code Section 1524 as indicated below by "X"(s) in that it:

☐ was stolen or embezzled
☒ was used as the means of committing a felony
☒ is possessed by a person with the intent to use it as a means of committing a public offense or is possessed by another to whom he or she may have delivered it for the purpose of concealing it or preventing its discovery,

☒ tends to show that a felony has been committed or a particular person has committed a felony,

☐ tends to show that sexual exploitation of a child, in violation of P.C. Section 311.3, has occurred or is occurring;

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AND TO SEIZE IT IF FOUND and bring it forthwith before me, or this court, at the courthouse of this court. This Search Warrant and incorporated Affidavit was sworn to and subscribed before me this 29 day of Jan. 1998, at 1:49 A.M. P.M. Wherefore, I find probable cause for the issuance of this Search Warrant and do issue it.

/s/ [ILLEGIBLE],
(SIGNATURE OF MAGISTRATE)
NIGHT SEARCH APPROVED: YES☐ NO ☐

Judge of the Superior/Municipal Court, Ventura Judicial District

LOCATIONS TO BE SEARCHED:

LOCATION #1:

2646 Cimmaron Avenue, City of Simi Valley, County of Ventura, State of California, which is further described as a two story, single family dwelling, off-white wood sided front, with off-white stucco sides, green trim, brown tile roof, with the front entrance located on the south side, and a metal basketball frame/hoop located on the north side of the front driveway. The house numbers "2646" are a green color similar to the house trim and are displayed on the off-white wooden boarding on the right side wall of the garage, facing the street. The numbers "2646" in black against a white background are painted on the raised curb to the right of the front driveway. To include all rooms, attics, basements, closets, storage areas, attached garages, and other parts therein; and the surrounding grounds and any storage sheds, detached garages, or out buildings of any kind located thereon, and any safes or locked boxes therein. Any vehicles that are registered to or belonging to occupants of the residence and that are on or adjacent to the property. See attachment "A" for Photos.

Searching officers are directed to answer the telephone and converse with callers who appear to be calling in regards to gang related activity and note and record the conversation without revealing their true identity. Searching officers are also directed to listen to, note and record any return calls to any phone numbers left on such devices and to converse with any person(s) who appear to be calling with regards to gang related activity without revealing their true identity. Searching officers are also directed to listen to, note and record any message left on any telephone answering device, tape recorder or digital pager located therein.

LOCATION #2:

1363 Patricia Avenue, City of Simi Valley, County of Ventura, State of California, which is further described as a single story, single family dwelling, blue wood siding to the front and sides, with an attached garage, white with wood siding located on the east side of the residence, gray composition shingles, white trim. The numbers "1363" in black against a white background are displayed in 3 locations on the front of the residence. To include all rooms, attics, basements, closets, storage areas, attached garages, and other parts therein; and the surrounding grounds and any storage sheds, detached garages, or out buildings of any kind located thereon, any safes or locked boxes therein. Any vehicles that are registered to or belonging to occupants of the residence and that are on or adjacent to the property. See attachment "B" for photos.

Searching officers are directed to answer the telephone and converse with callers who appear to be calling in regards to gang activity and note and record the conversation without revealing their true identity. Searching officers are also directed to listen to, note and record any message left on any telephone answering device, tape recorder or digital pager located therein. Searching officers may return calls to any phone numbers left on such devices and to converse with any person(s) who appear to be calling with regards to gang related activity without revealing their true identity.

THE PERSON OF: Romero, Raymond Joseph, Hispanic male, DOB: 06110179, 5'7", 155 lbs., brown hair, brown eyes, No CDL

FOR THE FOLLOWING PROPERTY:

1. Deadly weapons, specifically firearms including ammunition, casings, holsters and cleaning equipment, knives and accessories such as sheaths; evidence of street gang membership or affiliation with any street gang, paraphernalia to

include any reference to West Side Locos street gang, etc. Said items of evidence to include any drawings, writings, objects or graffiti depicting gang members' names, initials, logos, monikers, slogans, or mention of street gang membership or affiliation, activity or identity; any paintings, drawings, photographs or photograph albums depicting persons, vehicles, weapons, or locations which appear upon observation to be relevant to gang membership or association, or which depict items believed to be evidence in the case being investigated with this warrant or which depict evidence of any criminal activity; any newspaper clippings relating details of, or referring to any crime or crimes of violence; any address books, lists of, or single references to addresses or telephone numbers of persons who are determined to belong to or to be affiliated with any street gangs.

2. Items of personal property tending to establish the identity of person(s) in control of said premises and/or vehicle(s), including items of identification, utility and telephone receipts, prescription bottles, financial instruments/records, mail correspondence, keys, photographs and video tapes.

3. Stolen property

STATEMENT OF PROBABLE CAUSE

The facts of establishing probable cause for the issuance of this search warrant are as follows:

I am currently employed as a Police Officer by the Simi Valley Police Department (Ventura County, California) and am assigned to the Special Problems Section, dealing specifically with gangs/graffiti. My assignments with the Simi Valley Police Department have included D.A.R.E., Uniformed Patrol, S.W.A.T. Team, and my current assignment. I have been a Police Officer with the Simi Valley Police Department since 1988 and was a Senior Police Officer from 1992 through 1997, with Field Training Officer

responsibilities. I have investigated or have been involved in investigating thousands of crimes ranging from vandalism and petty theft, to ADW's, and Murder, including crimes related to gangs/graffiti. I completed numerous training classes and seminars regarding criminal investigation. I have also attended numerous training classes and conferences dealing specifically with gangs, gang sub-cultures, and gang investigations. I also attend monthly meetings of gang investigators, and am currently a member of the California Gang Investigators Association. I have interviewed numerous criminals, including gang members and learned how these individuals commit their crimes, conceal their criminal acts, and dispose of evidence and items pertaining to the commission of a crime.

I've interviewed gang members, ex-gang members, their families, girlfriends, associates, victims etc., regarding their motives, habits, and belief systems. I've reviewed court records, and Police records regarding criminal activity by numerous gang members and associates, specifically, those individuals in the West Side Locos street gang, of which Ray Romero is an active member. I've also spoken with probation and parole officers of numerous gang members regarding their habits, sub-culture, etc.

Furthermore, as a member of the Special Problems Section of the Simi Valley Police Department, I monitor the activities, membership and methods of operation of various street gangs throughout the City of Simi Valley, in particular, the West Side Locos and Varrio Simi Valley street gangs that exist in certain areas of the City of Simi Valley.

The West Side Locos street gang is a criminal street gang in that it is an ongoing organization involving 3 or more people, which possesses and uses a common sign or symbol, and which engages in a pattern of criminal activity. The West Side Locos street gang is a direct rival to the Varrio Simi Valley gang. In regards to this affidavit, the locations in

question are inhabited by Raymond Romero, a West Side Locos gang member or other members of the West Side Locos street gang. I also know, based upon my training and experience, that yelling out a gang name, or "flashing" a gang sign, or driving through a rival gang members neighborhood constitutes a challenge in street gang culture. And that street gang members commonly display their gang affiliation immediately prior to, during, or immediately following the commission of a crime against, or an affront to, a rival gang via hand signals, graffiti, or verbal expressions and that retaliation against a rival gang for doing such acts, most often always occurs following, what gang members view as a strong personal insult.

It has been my experience that gang members often hide the weapons used in such crimes, and other evidence associated with such crimes such as clothing and other paraphernalia in their homes, the homes of co-participants and the homes of fellow gang members, or in their vehicles. It has also been my experience that gang members typically do not purchase the handguns they use, or are prohibited from purchasing handguns due to their criminal records, or age. As such it is your affiants experience that gang members will steal handguns and weapons or trade narcotics for handguns and weapons.

Further, my experience indicates that most street gang members are known by street names or monikers to their fellow gang members, and that they frequently write their gang name, their street name, or moniker and the street names or monikers of their associates on walls, furniture, miscellaneous items or papers, both within and on their residences and within or on their vehicles. I know that gang members, especially Hispanic gang members, frequently adorn their bodies with tattoos, many of which declare their gang affiliation. Most gang members keep photographs and photo albums in which are depicted: (l) themselves and fellow gang members who are posing and displaying hand

gang signs which indicated gang identity or affiliation, (2) gang members or associates posing with weapons which are often used for criminal activities, (3) gang members or associates posing beside vehicles which are occasionally used during the commission of crimes, and (4) gang members or associates posing at locations which are occasionally used and known to be specific gang hangouts. Gang members also occasionally maintain scrapbooks or newspaper articles which describe crimes committed by or against their gang. They will also maintain phone books or address books which document the current addresses and phone numbers of gang members or associates. Furthermore, such evidence of gang membership and clothing are not normally disposed of, and therefore, are likely to be found at the locations to be searched, such as gang writings, belts, belt buckles, "rags" (handkerchiefs or bandanas), weapons, photographs, photo albums, posters, etc. It has also been my experience that gang members often keep weapons and gang paraphernalia at other gang members residences, particularly if the gang member in question is currently on probation or is the focus of a criminal investigation.

It has been my experience that gang members are obligated to retaliate for assaults by opposing gang members, and that in the course of doing so, gang members will arm themselves with a wide variety of weapons. It has also been my experience that within the gang sub-culture, the gang that originally committed the assault is well aware of this retaliation, and as such, will also arm themselves with weapons. I also know that gang members are obligated to assist their fellow gang members in efforts against rival gang members, and will arm themselves to this end. It is my experience from actually having observed these items during consent searches, probation searches and search warrants, the review of numerous gang investigations, and consultation with other gang investigators, that the items described in this affidavit are kept by gang members.

On 01/13/97 at approximately 2031 hours, while assigned to the Special Problems Section of the Simi Valley Police Department, myself and Officer R. Brill were dispatched to 355 Bonita Drive, in the City of Simi Valley, in regards to a "drive-by" shooting which had just occurred at that location. A vehicle description provided by the victims, was broadcast by SVPD, describing the suspect vehicle as a light green vehicle, possibly a Toyota Tercel. The victims had reported that the listed vehicle and its occupants had driven by the residence at 355 Bonita Drive, stopped and fired multiple shots from a handgun at individuals standing to the front of the residence and subsequently striking the residence itself, which was occupied by subjects. One bullet hole was located to the front of the residence, and three spent .22 LR cartridges were recovered from the street.

SVPD Dispatch provided additional suspect information, which named the possible suspects as West Side gang members, "Little Gato," "Delfino" and "Ray Romero." "Delfino" is Delfino Vasquez, a known West Side Locos gang member. While responding to the scene, SVPD Sr. Officer Hale advised SVPD dispatch that he observed a light green Toyota Tercel in the Chevron Gas Station, 2449 Sterns Street. Officer Hale advised SVPD dispatch that the vehicle was occupied by 3 Hispanic males. We responded to Sr. Officer Hale's location and subsequently assisted in the removal of Suspect-Ricardo Bravo, who was driving the vehicle, Suspect-Delfino Vasquez and Suspect-Raymond Romero who were passengers. Victim-Joel Quiroz, Victim-Brandon Nelson, and Victim-Melissa Garcia were transported to our location and all three victims identified the vehicle as the suspect vehicle. In addition to their identification, Victim-Brandon Nelson had stated that he had thrown a brick at the suspect vehicle. There was obvious damage to both sides of the vehicle, with pieces of the red brick still attached within the dented metal.

The suspects were transported to the Simi Valley Police Department and interviewed concerning this incident. Both S-Delfino Vasquez and S-Ricardo Bravo waived their Miranda rights and statements were obtained, including the subsequent location/recovery of the .22 caliber handgun used in this drive-by.

S-Bravo admitted to driving to this location with the intent to "box" VSV gang members who they know to live at the residence. S-Bravo stated that upon arriving to the front of the residence, his vehicle was struck with an unknown object. He said he continued driving; initiated a U-turn and drove by the residence a second time, at which point his vehicle was struck a second time by an unknown object. S-Bravo said the residence was fired upon by the passengers inside his vehicle. He said they then fled the area at a high rate of speed, with S-Bravo failing to stop for traffic signals. He said he knew that the handgun had been thrown from the vehicle, though he did not know where the handgun could be located.

S-Vasquez was interviewed and stated he, S-Bravo and S-Raymond Romero drove to 355 Bonita Drive with the intent of "boxing" Gabriel Reyes, a known VSV gang member. He said he and S-Bravo were aware that S-Raymond Romero was in possession of a handgun prior to them going to the residence. He said once they arrived, the vehicle was struck on the side by an unknown object. S-Vasquez stated they continued driving, turned the vehicle around, and upon approaching the residence a second time, was struck again by an unknown object. S-Vasquez said, it was at this point that S-Bravo stopped the vehicle to the front of the residence. S-Vasquez stated he exited and fired 3 rounds from a handgun at the residence. S-Vasquez stated prior to firing the rounds at the residence, he observed numerous subjects standing to the front of the residence. He said he observed the subjects fall to the ground as he fired towards them and the residence. S-Vasquez said they fled the area at a high rate of speed. He

said he subsequently threw the handgun from the vehicle in the area of Madera Road south of Los Angeles Avenue. The loaded handgun was subsequently located and booked into SVPD evidence:

S-Romero was interviewed and he refused to waive his rights. At the time of this traffic stop, S-Romero was located in the right rear passenger seat of the vehicle. Pursuant to the consent search of the vehicle, we located .25 caliber ammunition on the floorboard of the vehicle, where S-Romero was seated.

It should be noted that S-Ricardo Bravo, S-Delfino Vasquez and S-Raymond Romero are all members of the West Side Locos gang. This gang is a rival of the Varrio Simi Valley, of which some members reside at 355 Bonita Drive in the City of Simi Valley. S-Raymond Romero's gang moniker is "Gato", S-Ricardo Bravo's gang moniker is "Spooky", and S-Delfino Vasquez' gang moniker is "Sleepy."

On 01/14/98 Detective Jay Carrott and Detective Kathy Shatz, of the Simi Valley Police Department, responded to Ventura County Juvenile Hall and interviewed S-Ricardo Bravo and S-Delfino Vasquez regarding .25 caliber rounds which were located inside S-Ricardo Bravo's vehicle, as well as one bullet which was found in S-Ricardo Bravos pants pocket at the time of his arrest. A .22 caliber was used in this particular drive-by; however on 11/28/97, a .25 caliber handgun was utilized in a drive-by shooting which resulted in a Varrio Simi Valley gang member being shot. In that case, the gun was never recovered. In questioning these subjects, both individuals stated that S-Raymond Romero was in possession of a chromed .25 semi-automatic handgun in the afternoon hours of 01/13/98. Both subjects stated that they had viewed the handgun, and S-Raymond Romero provided three .25 caliber bullets to Ricardo Bravo, which we subsequently recovered. S-Ricardo Bravo and S-Delfino Vasquez also stated that S-Raymond Romero attempted to

discharge the .25 caliber handgun out of the window of the moving vehicle; however the handgun misfired. S-Raymond Romero directed S-Ricardo Bravo to drive the vehicle to Erringer Road and Fitzgerald Road, in the City of Simi Valley. Upon their arrival, S-Raymond Romero exited the vehicle, with the .25 caliber handgun, walked westbound on foot, and subsequently secreted the handgun at an unknown residence of a West Side Locos Gang member. It is your affiants belief that Raymond Romero may have retrieved this handgun since being released from custody in this case.

On 01/17/98, Varrio Simi Valley gang member, Gabriel Reyes, was in custody at the Simi Valley Police Department on an unrelated crime. He requested to speak with me regarding the drive-by shooting. He informed me that on 01/13/98, he and 3 other subjects had driven past rival gang member, Delfino Vasquez' residence. He told me that S-Delfino Vasquez, S-Ricardo Bravo, and S-Raymond Romero were standing in the front yard of the residence. Gabriel Reyes stated that the subjects were visibly angered and subsequently gave chase in S-Ricardo Bravo's vehicle. Gabriel Reyes stated they were able to evade the West Side Locos gang members and subsequently arrived at his address, 742 Ashland Avenue. Gabriel Reyes stated he and his associates were to the front of his residence for approx. one hour, when the light green Toyota Tercel, driven by S-Ricardo Bravo, with S-Raymond Romero seated in the right front passenger seat, and an unknown passenger in the rear of the vehicle. Gabriel Reyes said the vehicle drove westbound past his residence, and Gabriel Reyes stated S-Raymond Romero pointed a small caliber chromed handgun at he [sic] and the other subjects standing to the front of the residence. These statements together from two separate sources, with the same information, corroborate the fact that S-Raymond Romero, a known West Side Locos gang member, was in possession of a chrome .25 caliber handgun on 01/13/98, just several hours prior to the drive-by shooting. All of which

makes this a violation of 12025(b)(3) P.C./ gang member with a gun.

The residence at 1363 Patricia Avenue has been occupied by a known West Side Locos associate, Genaro Gonzalez Jr. This has been established through in field contacts by Simi Valley Police officers. Raymond Romero is known to be at this residence, and has been identified as currently living at this location, through information from a variety of sources. On 01/22/98, at approximately 1925 hours, myself and Officer R. Brill arrived at 2646 Cimmaron Avenue, contacted Anthony Romero and interviewed him concerning his brother, Raymond Romero. He was questioned at length concerning where his brother resides. He stated his brother lives on Patricia Avenue, although he was unsure of the actual address. He was asked to describe the house where his brother lives. He stated the residence was a "poor house," on Patricia Avenue. He stated that a "poor house" was a residence with a large number of subjects residing in a residence designed for one family. Anthony Romero further described the residence as being blue in color, with several "campers" in the rear yard. He further stated that Genaro Gonzales lived at this residence, though Anthony believed Genaro had moved to Mexico. Anthony also said that his brother comes to this address, 2646 Cimmaron Avenue, twice a week to do laundry. Anthony said his brother sometimes spends the night once a week, sleeping in his "old room," and that Raymond keeps some of his personal property of value, at this location, because Raymond believes these items would be stolen at the Patricia Avenue location. Anthony also stated that his brother will sometimes spend more than one night per week at the Cimmaron Avenue location, because it is a "nicer" place to stay than Patricia Avenue. We asked Anthony how he would contact Raymond and he said, "by phone." He was asked to provide us with the phone number and he provided, PH# 522-9437. We also asked to speak with Anthony's mother; however, Anthony advised us that his

mother was not at the residence, though she was expected shortly. We subsequently waited to the front of the residence for approximately 20 minutes until Patricia Romero arrived.

We interviewed Patricia Romero concerning her son, Raymond Romero, and she stated the following. She was informed that since the drive-by shooting, there has been retaliation from Varrio Simi Valley, in the form of assaults. We questioned her about "where" Raymond currently lives. She said Raymond does not live at the residence, though he does return to the residence to wash his clothes and spend the night on occasion. Patricia Romero said she knows Raymond lives on Patricia Avenue, though she did not know the address. She was asked if she knew Raymond's phone number and she subsequently provided us with phone number 522-9437. Patricia said she believed Raymond lives with Genaro Gonzales; however, she believed Genaro had moved out of the residence. She said Raymond may come to her residence perhaps once or twice a week, though rarely during the week. Patricia Romero stated she was not surprised by this recent event involving Raymond. She said, "I know, Ray is either going to be dead or in prison." She said that she would not mind, if in the future, we needed to come back to her residence regarding her son, Raymond. Both interviews were covertly tape recorded and the micro-cassette tape was booked into SVPD evidence.

On 01/26/98, utilizing the phone number 522-9437, which was provided by Patricia Romero and Anthony Romero, as belonging to S-Raymond Romero, I entered SVPD dispatch. I had SVPD dispatcher Phyllis Sparks dial this number and informed her to advise any subject who answered the phone that there was a problem with the "911" system on Patricia Avenue. I instructed Dispatcher Sparks to request that any subject answering her phone call, should dial "911" to verify the "911" information. Dispatcher Sparks did as requested and a Hispanic male answered the phone when she called,

PH# 522-9437. She explained that there was a problem with the "911" lines. She asked the Hispanic male if the address he was at was 1363 Patricia Avenue. The Hispanic male stated that the address was indeed 1363 Patricia Avenue, and he agreed to dial "911" to verify information with the "911" operator. The line was disconnected and SVPD dispatch received a "911" call almost immediately from 1363 Patricia Avenue. This information regarding the address appears on the "911" screen in SVPD dispatch, along with the incoming phone number of PH #522-9437, which was listed to Genaro Gonzales. A copy of the "911" printout is attached and is marked as attachment "C" for review.

Dispatcher Sparks verified the information with the Hispanic male and he stated that the information received on the "911" screen was correct in regards to the phone number and address. Being that the "911" screen showed that Genaro Gonzales resided at the residence, Dispatcher Sparks asked the Hispanic male caller if he was Genaro Gonzales. The Hispanic male said, "No. A friend." Dispatcher Sparks as [sic] the caller for his name, and the Hispanic male said, "Raymond." I was listening to this conversation on another extension in the SVPD dispatch center. It is your affiants belief that this subject was Raymond Romero. The phone number provided by Patricia Romero and Anthony Romero as belonging to S-Raymond Romero was verified, as was the address through the listed means, and 1363 Patricia Avenue is the true and correct address of Raymond Romero.

Anthony Romero, Raymond's brother is a West Side Locos associate and still resides at the Cimmaron house, maintains contact with his brother, and S-Raymond Romero still goes to the Cimmaron residence owned by his mother to this day. As such, it is your affiants belief that S-Raymond Romero will utilize his relationship with his brother to conceal the listed property at 2646 Cimmaron Avenue, or 1363 Patricia Avenue.

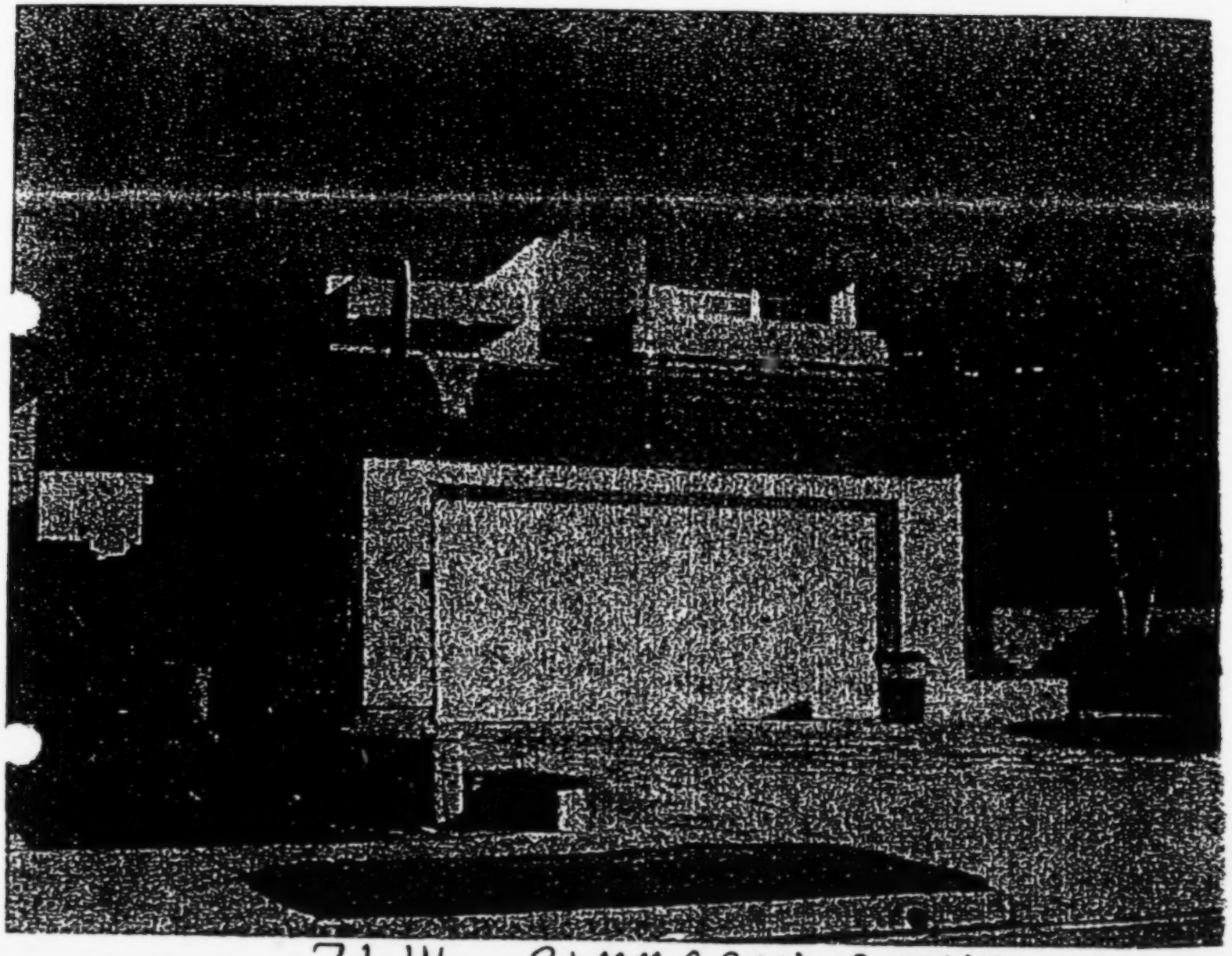
Despite the lapse of time between the commission of the crime and the anticipated service of this search warrant, your affiant believes that the weapon(s) used can still be found at the locations to be searched.

Your affiant believes that these are not the types of items normally disposed of after the commission of a crime and that they will therefore likely still be found in the locations or on the persons to be searched. Your affiant notes that whether or not the firearm sought is recovered, the above items would tend to show that a firearm existed and may have once been located in a place to which the suspect(s) have access, also that these items would tend to connect the suspect(s) with the weapons sought.

Your affiant states that the observations set forth in this affidavit include both the observations of your affiant and that of his fellow law enforcement officers as related to your affiant by them. Your affiant also states that the descriptions of the locations to be searched are based on the observations of these locations by your affiant.

Based upon the facts set forth in this affidavit, it is your affiant's belief that the items sought will be found at the place(s) indicated. Your affiant therefore respectfully requests this search warrant to be issued.

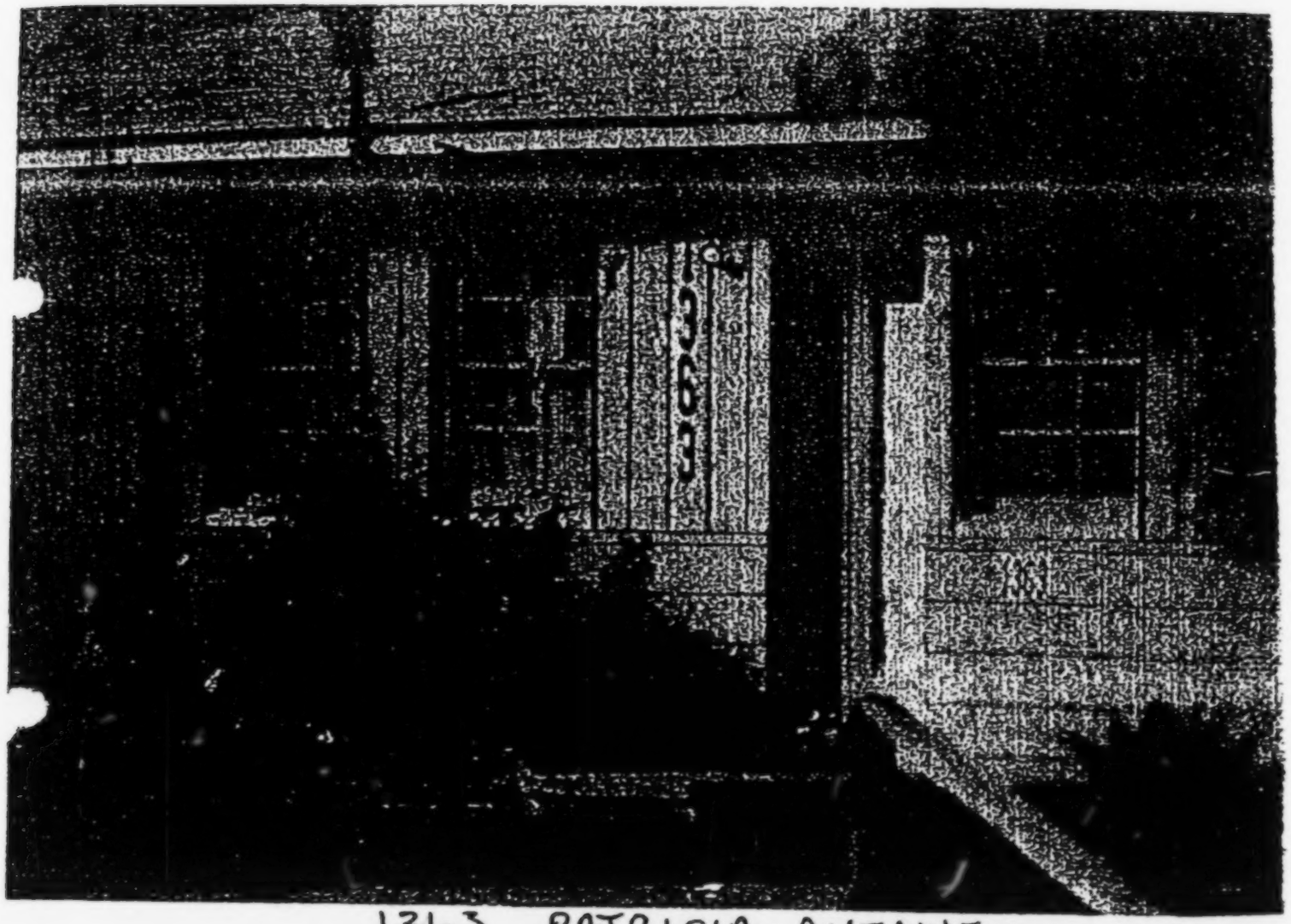
2646 HOUSE PHOTO FOLD IN'S



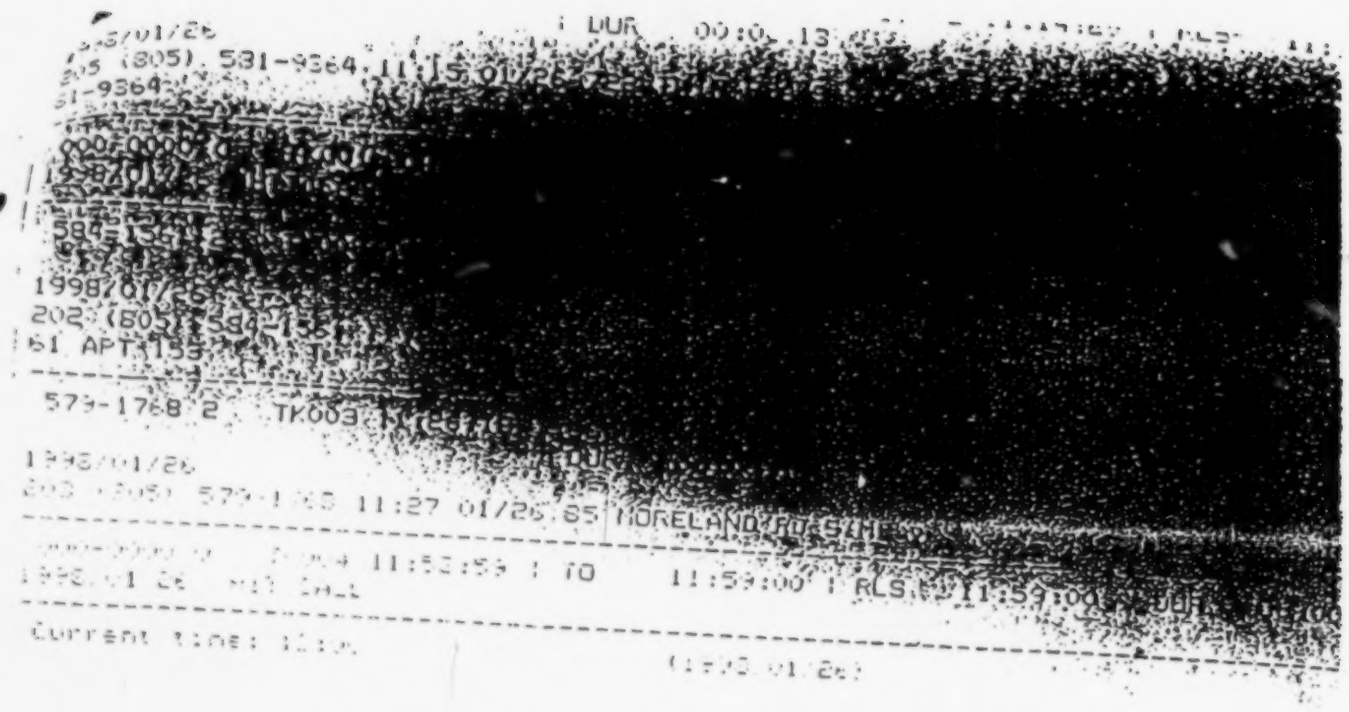
2646 CIMMARON AVENUE
SIMI VALLEY, CALIFORNIA

0 123 265

1363 PATRICIA AVE. HOUSE PHOTO



1363 PATRICIA AVENUE
SIMI VALLEY, CALIFORNIA



1998/01/26
205 (805) 522-9437 12:08 01/26 1383 PATRICIA AV SIMI VLY CA 208 RESD GONCALES
NARO 522-9437 PE#1:

ATTACHMENT C

Illeg. ble
Page

125
267

ATTACHMENT C

225

BEST AVAILABLE COPY

GANG VALIDATION
STANDARDIZED GANG IDENTIFICATION CRITERIA
SIMI VALLEY POLICE DEPARTMENT

[SEAL]

GANG NAME: WEST SIDE LOCOS

NAME: ROMERO, RAYMOND JOSEPH

DATE OF BIRTH: 6-10-79

CLASSIFICATION:

☒ HARDCORE GANG MEMBER: Must meet at least five of the first eleven criteria.

☐ ASSOCIATE GANG MEMBER: Must meet at least two of the fifteen criteria.

CHECK ALL THAT APPLY:

☒ 1. TATTOOS DEPICTING GANG INFORMATION.

☒ 2. MODE OF DRESS CONSISTENT WITH GANGS.

☐ 3. GANG GRAFFITI ON PERSONAL PROPERTY

☐ 4. POSSESSION OF WRITINGS ATTRIBUTABLE TO A PARTICULAR GANG WHICH MAY INDICATE GANG MEMBERSHIP.

☒ 5. ADMISSIONS WHICH INDICATE GANG AFFILIATION.

☒ 6. ARREST ARISING FROM A CRIMINAL ACT IN WHICH KNOWN GANG MEMBERS PARTICIPATED.

☐ 7. ATTENDANCE AT FUNCTIONS SPONSORED BY THE GANG OR BY KNOWN GANG MEMBERS.

☐ 8. INFORMATION FROM A RELIABLE INFORMANT.

☐ 9. STATEMENTS FROM FAMILY MEMBERS INDICATING THEIR BELIEF THAT THE INDIVIDUAL IS A GANG MEMBER.

☐ 10. INFORMATION FROM OTHER LAW ENFORCEMENT AGENCIES GANG OFFICERS IDENTIFYING THE SUBJECT AS A GANG MEMBER.

☒ 11. METHOD OF OPERATION CONSISTENT WITH GANG ACTIVITY (i.e. MOTEL/HOTEL PROFILE, GRAFFITI, CRIMINAL ACTIVITY).

☒ 12. FIELD INTERVIEW WITH ANOTHER GANG MEMBER.

☒ 13. OBSERVED LOITERING, RIOTING OR MEETING WITH ANOTHER GANG MEMBER.

☐ 14. INVOLVED IN THE SALES AND DISTRIBUTION OF NARCOTICS FOR A GANG MEMBER.

☐ 15. INDIRECTLY ASSOCIATED IN A CRIMINAL ACTIVITY COMMITTED BY A GANG MEMBER (LOOKOUT, RUNNER, ETC)

/s/ R. Brill #322 — 1-14-98
OFFICER (Name and serial number) — DATE

UTILITY REPORT SIMI VALLEY POLICE DEPARTMENT
NCIC/CII CA 05609 3200 COCHRAN STREET 583-6950

PAGE 1 OF 2 — 1 GRID — 2 BEAT — 3 CASE NUMBER 98-01076

4 [ ] INCIDENT REPORT
[X] SUPPLEMENTAL REPORT
[ ] CASE CLEARED

5 CONTINUATION OF:
[ ] CRIME REPORT
[ ] ARREST REPORT
[ ] INCIDENT REPORT
[ ] SUPPLEMENTAL REPORT
[ ] WORTHLESS DOCUMENT
[ ] MISSING PERSON

6 DATE/TIME OF INCIDENT:

7 LOCATION OF INCIDENT: 2246 Cimmaron Avenue

8 CODE	9 NAME (Last, First, Middle, Gen) / FIRM NAME
[S]	Romero, Raymond Joseph

10 RACE	11 SEX	12 HT	13 WT	14 BUILD	15 HAIR
[ ]	[ ]	[ ]	[ ]	[ ]	[ ]

16 EYES	17 DOB	18 AGE
[ ]	[ ]	[ ]

19 RESIDENCE ADDRESS	CITY	STATE	ZIP
1363 Patricia Avenue	Simi Valley	CA	93063

20 RESIDENCE PHONE

21 INCIDENT / OFFENSE
246.6 PC/182 PC

22 NARRATIVE: (INCLUDE ACTIONS AND CONVERSATIONS BY SUSPECTS AND VICTIMS AND OTHER EVENTS NOT PREVIOUSLY COVERED)

On 01/29/98, a search warrant was obtained for 2646 Cimmaron Avenue and 1363 Patricia Avenue, both in the City of Simi Valley. On 02/03/98, the search warrant was served at both locations, with evidence recovered and booked into SVPD evidence. Numerous items of gang paraphernalia and gang clothing was obtained from both locations, including .25 caliber bullets which were located in Raymond Romero's bedroom at 1363 Patricia Avenue. In addition to photographs depicting gang members, a yearbook (item #113) belonging to Raymond Romero was located in his bedroom at 2646 Cimmaron Avenue. Upon viewing the yearbook, I ob-

served that Raymond Romero had written the gang moniker above the individual yearbook photo of individuals belonging to the West Side Locos gang. I also observed that Raymond Romero had crossed out the photo of members of the rival Varrio Simi Valley gang and written less than complimentary remarks above the VSV member's yearbook photographs. Raymond Romero had crossed out VSV gang member, Gabriel Reyes' photograph and written "187", which is the California Penal Code section for murder.

On 02/03/98, at approx. 1600 hours, Raymond Romero responded to SVPD to retrieve two concert tickets which were in his personal property. Myself and Officer R. Brill met Raymond Romero in the lobby of SVPD and asked to speak with him. He agreed, and followed us to the Detective interview room. I explained to Raymond that we had located an open box of .25 caliber ammunition in his bedroom at 1363 Patricia Avenue. I asked him where we could locate the .25 handgun. He at first denied ever having a .25 caliber handgun; then admitted to having a .25 caliber handgun on the day of the drive-by shooting, 01/13/98. He stated he had attempted to fire the handgun to ascertain if the handgun would fire; however, the gun "didn't work". He stated he "got rid of this handgun" and they (himself, Delfino Vasquez, and Ricardo Bravo) retrieved a second handgun. Raymond made no comments as to the actual drive-by shooting.

We asked him where he had purchased the .25 caliber handgun, and he said, "From some guy named 'Tim' 'Rancho Simi Park' for $100.00". He said he returned the handgun to "Tim" after the gun would not fire, and "Tim" refunded Raymond's $100.00. "Tim" is obviously a fictitious name/person, and it is unknown where the .25 caliber handgun can be located. We asked him how he contacted "Tim" and what was the subjects last name. Raymond Romero said, "I just see him around the park, but I don't know his last name or where he works".

The "Return To Search Warrant" was signed and filed on 02/06/98. See the attached paperwork listing the items recovered from the search warrant and booked into SVPD evidence.

23 NUMBER OF ARRESTEES:

24 ASSIGNED TO:

25 ASSIGNED BY:

26 CASE DISPO CLOSED BY
[ ] INACTIVE [ ] UNFOUNDED
[ ] ARR & PROS
[ ] COMP REFUSES TO PROS
[ ] COMP REFUSED BY DA
[ ] PROS OTHER OFFENSE
[ ] OCCURRED OTHER JURISDICTION
[ ] TURNED OVER TO OTHER JURISDICTION
[ ] DEATH OF SUSPECT
[ ] OTHER _____

27 COPIES TO:
[X] DET [X] CAU [ ] NARC [ ] PROB
2[X] JUV [ ] CII [X] OFFICER
[ ] WATCH COMMANDER ____
[X] OTHER DET. [ILLEGIBLE]

28 DATE/TIME REPORTED
01/13/98 2031

29 DATE/TIME OF REPORT
02/06/98 1600 hours

30 REPORTING OFFICER / ID NO/DIV/UNIT
D. Muehler #248/SPS/GI

31 APPROVED BY / ID NO
/s/ [ILLEGIBLE] [ILLEGIBLE] 6

UTILITY EPORT SIMI VALLEY POLICE DEPARTMENT
NCIC/CII CA 05609 3200 COCHRAN STREET 583-6950

PAGE 2 OF 2 | 1 GRID | 2 BEAT | 3 CASE NUMBER 98-01076

4 [ ] INCIDENT REPORT
[X] SUPPLEMENTAL REPORT
[ ] CASE CLEARED

5 CONTINUATION OF: [ ] CRIME REPORT
[ ] ARREST REPORT
[ ] INCIDENT REPORT
[ ] SUPPLEMENTAL REPORT
[ ] WORTHLESS DOCUMENT
[ ] MISSING PERSON

6 DATE/TIME OF INCIDENT: 01/13/98 2031 hrs.

7 LOCATION OF INCIDENT: 355 E. Bonita

8 CODE	9 NAME (Last, First, Middle, Gen) / FIRM NAME
[S]	Romero, Raymond Joseph

10 RACE	11 SEX	12 HT	13 WT	14 BUILD	15 HAIR
[ ]	[ ]	[ ]	[ ]	[ ]	[ ]

16 EYES	17 DOB	18 AGE
[ ]	[ ]	[ ]

19 RESIDENCE ADDRESS	CITY	STATE	ZIP
1363 Patricia Avenue	Simi Valley	CA	93063

20 RESIDENCE PHONE: 522-9437

21 INCIDENT / OFFENSE: 246.6 PC/182 PC 245(a)(2) P.C.

22 NARRATIVE: (INCLUDE ACTIONS AND CONVERSATIONS BY SUSPECTS AND VICTIMS AND OTHER EVENTS NOT PREVIOUSLY COVERED)

Patricia Romero stated she was not surprised by this recent event involving Raymond. She said, "I know, Ray is either going to be dead or in prison." She said that she would not mind, if in the furture, we needed to come back to her residence regarding her son, Raymond.

Both interviews were covertly tape recorded and the micro-cassette tape was booked into SVPD evidence.

23 NUMBER OF ARRESTEES:

24 ASSIGNED TO:

25 ASSIGNED BY:

26 CASE DISPO CLOSED BY
[ ] INACTIVE [ ] UNFOUNDED
[ ] ARR & PROS
[ ] COMP REFUSES TO PROS
[ ] COMP REFUSED BY DA
[ ] PROS OTHER OFFENSE
[ ] OCCURRED OTHER JURISDICTION
[ ] TURNED OVER TO OTHER JURISDICTION
[ ] DEATH OF SUSPECT
[ ] OTHER _____

27 COPIES TO: [ ] DET [ ] CAU [ ] NARC [ ] PROB
[ ] JUV [ ] CII [ ] OFFICER
[ ] WATCH COMMANDER ____
[ ] OTHER _____

28 DATE/TIME REPORTED		29 DATE/TIME OF REPORT	
01/13/98	2031	01/26/98	1200 hours

30 REPORTING OFFICER / ID NO/DIV/UNIT
D. Muehler #248/SPS/GI

31 APPROVED BY / ID NO
-/s/ [ILLEGIBLE] [ILLEGIBLE]

SIMI VALLEY POLICE DEPARTMENT POLICY AND PROCEDURES MANUAL Special Operations Unit	SUBJECT: SERVICE OF SEARCH WARRANTS AND RAIDS	NUMBER: UNIT NUMBER 206
	DATE: 10/26/94 PAGE 1 OF 2	SUPERCEDES: UNIT ORDER 311 DATED 09/15/93

I. POLICY

A. It is the policy of the Special Operations Unit that the execution of search warrants, arrests, conducting parole searches, or invoking search clauses as a condition of parole shall be accomplished with the safety of the involved personnel as the prime consideration.

II. PROCEDURE

A. Supervisor

1. No search shall be executed on any type of building nor will a "buy bust" take place without the presence of a supervisor.

B. Background Information

1. Prior to conducting a search or planned arrest, the assigned detective/officer will prepare a file containing background information concerning the suspects involved and the location to be entered.
2. Suspect(s) Information
   a. Rap sheet
   b. Photographs
   c. D.M.V. information
   d. Reports
   e. Information on known associates
   f. Vehicle(s)
   g. Any other information available

3. Location
   a. Description of the location of the premises or area involved
   b. Description of the interior and exterior of the building.
      (1) Diagram of the structure whenever possible.
   c. Number of expected persons on the premises.
      (1) Background information on occupants (in addition to the primary suspect[s]).
      (2) Presence of any children.
   d. Any threats to officers.
   e. Firearms expected to be on the premises.
      (1) Include type, location, etc.
   f. Amount and location of any expected contraband.
   g. Dogs at the premises.
   h. Suspect's plans in the event of a raid.
   i. The presence of any specialized electronic equipment.
   j. Any other pertinent data.

C. Operational Plan

1. Prior to the execution of any search or planned arrest, a written Operational Plan will be developed and approved by the unit supervisor. Long and short form samples are attached.
2. The Operational Plan shall include:
   a. Necessary background information on the suspect(s) and location involved.

b. Photograph of the suspect(s) and of any informant(s) or undercover officer(s) involved (if not present at the briefing).

c. Diagram of the location involved (interior and exterior).

d. Location of any "staging area" or command post to be used prior to the execution of the raid.

e. Directions to the suspect location and to the "staging area."

f. Specific assignments of all personnel involved in the raid.

g. Assignment of specialized equipment.

h. Assignment of radio frequency to be used.

i. Copy of appropriate street map for the location which also depicts route to nearest medical facility.

3. Personnel assignments

a. A minimum of six (6) officers, including at least one (1) uniformed officer, should comprise a raid team for the purpose of the execution of a building entry.

b. Building entry

(1) Entry team

(a) One uniformed officer and a minimum of two detectives

(2) Rear yard

(a) Two personnel

(3) Side yards and other exits

(a) Whenever possible, side yards and other exits from the premises which are not readily observable by the entry team or the rear yard team should be covered.

c. Containment and search team.

(1) A containment team of a minimum of two personnel should be assigned to contain all occupants of the premises.

(2) A search team of a minimum of two officers should be assigned to conduct any specified searches and to collect and record any evidence and/or contraband seized.

(3) One detective or crime scene investigator shall be assigned to photograph (or video-tape) the operation.

(a) The premises, including any damage done by the entry team prior to searching

(b) The occupants of the premises

(c) All evidence and contraband seized

(d) If appropriate, post search photographs

d. Prisoner processing team

(1) The on scene supervisor shall facilitate the transportation and booking of any suspects arrested at the scene.

(2) All persons within the premises shall be contained until the premises is secure. They will then be patted down for weapons and contraband, identified, F.I.'d and run for outstanding warrants.

(3) When the interior of the premises is secured, officers shall notify those personnel outside.

(4) In the event of "shots fired," officers should contain the premises and call for assistance.

(5) Should an accidental discharge occur, the involved officer shall immediately appraise those present what occurred and check for injuries.

(6) Members involved in conducting a raid shall use only that force necessary while effecting an arrest. Physical force will be used only in the following circumstances:

(a) To prevent escape

(b) To prevent destruction of evidence

(c) In self defense

(d) To prevent violence to another person

G. Evidence

1. Special Operations Unit personnel shall only seize those items of evidentiary value, items which cannot be legally seized will not be confiscated.
2. All evidence seized will be properly marked and tagged and shall remain in the possession of the designated finder until secured in the evidence locker or crime lab.
3. All evidence seized will be recorded. A copy of the seized property sheet and a copy of the search warrant shall be left with the occupant or left in a conspicuous place where it can be found by the occupant.

4. No property or evidence will be removed from the searched premises unless it is listed on the search warrant or is of explicit evidentiary value.
5. No property will be willfully or maliciously damaged or destroyed by any officer while executing a search warrant.
6. The search warrant return should be properly filed with the court of jurisdiction within three (3) working days from the date of the execution of the search warrant. The maximum life of a search warrant is ten (10) days.

H. General Guidelines

1. In the event of a mistaken arrest of the entry into the wrong premises, or alleged misconduct, the unit supervisor or case detective on the scene will report the circumstances of such incident to the unit commander, who will immediately notify the Division Captain. Written reports detailing the circumstances of the incident will be submitted within 24 hours to the unit commander.
2. On occasion, it may be necessary to secure a building prior to the receipt of a search warrant. In such instances, the structure will be secured and occupants controlled after which Special Operations Unit personnel will vacate the structure to await arrival of the warrant. Exception—when occupants are not removed from the premises, a necessary number of police personnel will remain with the occupant(s) for security purposes.
3. At no time will police personnel consume any food or beverage upon any premises which is being searched, has been searched, or is about to be searched.

4. Unless approved by the unit commander in advance, non-enforcement personnel will not be allowed to accompany officers during any planned search or arrest activity.

Cross References:

General Order #0020
General Order #0401
General Order #1001

Approved/Adopted: /s/ RW Wright Date 2-16-95
Division Captain

Simi Valley Police Department
Special Operations Unit
Tactical Operation Plan

TYPE OF OPERATION

DR/Case # 98-01076

☐ Arrest ☒ Search ☐ Buy/Bust ☐ Surveillance
☐ Buy/Ride ☐ Stakeout ☐ Other: _____

Case Detective: Muehler Phone: _____ Pager: [redacted] Cellular: [redacted]

Other Agencies: US Border Patrol

OPERATION SCHEDULE

Briefing Date: 02/03/98 Time: 0600 Hrs. Location: _____

Operation begins at: 0700 Hrs.Both locations simutaneously

Staging Location: West Parking lot/Simi South, Heywood West of Erringer

Route to staging location: S/B Sycamore to W/B Heywood St.**Team #1 will stage from SVPD

COMMUNICATIONS

Primary Radio Channel: SVPD Channel #3/Loc 2 Frequency: _____ MHZ

Alternate Radio Channel: SVPD Channel #6/Loc 1 Frequency: _____ MHZ

"Wire" Frequency: ☐ SVPD Wire 1 (Channel 22) ☐ SVPD Wire 2 (Channel 23)
☐ Other: _____

MISSION/OBJECTIVE

Serve search warrant at two locations. Which are directly linked to S-Raymond Romero. Primary objective is to recover a .25 caliber, semi-auto handgun, silver

OPERATION LOCATION

Location: Location #1: 2646 Cimmaron Avenue Phone 581-0547

Location #2: 1363 Patricia Avenue Phone # 522-9437

Thomas Map Information: Loc. #1: Pg. 498 C-1 ☒ Check if diagram attached
Loc. #2: Pg. 497 J 3

8

SIMI VALLEY POLICE DEPARTMENT
Special Operations Unit

SUSPECT INFORMATION

1. Name: Raymond Joseph Romero

Race H Sex M HT 5'7" WT 155 lbs. Hair Brn Eyes Brn

Address: 1363 Patricia Avenue, Simi Valley Phone #: 522-9437

Other Identifying Information: Tattoos: "Locos 13" on stomach, "Westside Locos" on forearm

Believed Armed? [x] Yes [ ] No - Type: .25 cal., semi-auto. handgun.

Violent History? [x] Yes [ ] No: _____

Arrestable? [ ] Yes [x] No - Charge(s): _____

Other Information: Westside Locos gang member

Moniker: "El Gato"

Vehicle #1: None registered

Vehicle #2: _____

2. Name: _____

Race _____ Sex _____ HT _____ WT _____ Hair _____ Eyes _____

Address: _____ Phone #: _____

Other Identifying Information: _____

Believed Armed? [ ] Yes [ ] No - Type: _____

Violent History? [ ] Yes [ ] No: _____

Arrestable? [ ] Yes [ ] No - Charge(s): _____

Other Information: _____

_____

Vehicle #1: _____

Vehicle #2: _____

3. Name: _____

Race _____ Sex _____ HT _____ WT _____ Hair _____ Eyes _____

Address: _____ Phone #: _____

Other Identifying Information: _____

Believed Armed? [ ] Yes [ ] No - Type: _____

Violent History? [ ] Yes [ ] No: _____

Arrestable? [ ] Yes [ ] No - Charge(s): _____

Other Information: _____

_____

Vehicle #1: _____

Vehicle #2: _____

[ ] Check if additional suspects - see attachment.

9

PERSONNEL

NAME	CALL SIGN	CELLULAR	PAGER	ASSIGNMENT
Lt. Thomas	F10 ✓	[redacted]	[redacted]	O.I.C.
D.Muehler	G1 ✓	[redacted]	[redacted]	Case Detective
Sgt. Riegert	G20	[redacted]	[redacted]	Team Leader/Location #1
J.May	G2	[redacted]	[redacted]	Search Team #1/Evidence Colle
A.Giuliani	G4		[redacted]	Search Team #1
P.FITZPATRICK	X			UNIFORM
R.Brill	G3 ✓		[redacted]	Search Team #2/Evidence Colle
M.Hodges	F1 ✓	[redacted]	[redacted]	Search Team #2/Garage
J.Adamczyk	F2 ✓		[redacted]	Search Team #2/Garage
B.Daniels				Search Team #2/Motorhome
S.Greenwood				Search Team #2/Motorhome
B.Summey				Search Team #2/Camper
A.Mccord	✓			Search Team #2/Camper
K.Shatz				Search Team #2/Van/Trucks
J.Carrott				Search Team #2/Van/Trucks
R.CHAMBERS	— ✓			Search Team #2/
T.Brown	G9 ✓			Search Team #2/
S.Johnson	K1			Search Team #2/Containment/Re
V.Allegra	X ✓			Search Team #2/Containment/Tr
M.Brill	X323			Search Team #2/Containment/Tr

☐ Check if more personnel - see attachment

☒ Check if SWAT assigned - see SWAT Operational Plan

U/C #1 Description: N/A

Clothing: N/A

Vehicle: N/A

U/C #2 Description: N/A

Clothing: N/A

Vehicle: N/A

10

ANTICIPATED SEQUENCE OF EVENTS

Sgt. Riegert/Team #1 will respond to 2646 Cimmaron. While Team #2 responds to 1363 Patricia Avenue. Upon the arrival of both teams at the locations, and upon containement being in place at location #2, Officer Muehler will give the command for both teams to execute.

Arrest Signals: Verbal N/A

Visual N/A

"Panic" Signals: Verbal

Visual

Officer with "Knock and Notice" responsibility (if applicable) 2646 Cimmaron Avnue/Sgt. Riegert ~~1363 Patricia Ave./Det. Lappin(Interior of Res)/Officer R.Brill(Attached garage), Individual Officers/Dets.~~ at any outbuildings

PLAN IF OFFICER OR U/C INJURED

1. Rescue/transportation assignment: Ventura County Fire Department ~~will stage at Location #2~~
2. Cover/backup assignment: Officer Muehler
3. Notify: Officer Muehler/ In the event that any Officer is injured
4. Other Information: all searching officers will be advised to HOLD their positions until injured personnel are removed.

Closest Hospital: Simi Valley Hospital

Address: 2975 Sycamore Dr., Simi Valley

Phone: 527-2727

Route to hospital: E/B Parricia to N/B Erringer Rd. to E/B Alamo to N/B Sycamore Dr

OUTSIDE AGENCY NOTIFICATIONS

1. Agency: Ventura County Fire #45 Phone: 578-2088
   Person Notified: CAPT VANDENBOSSCHE By: R. BRILL Time: 0600
2. Agency: ~~AMR Ambulance~~ Phone: 527-1133
   Person Notified: CAPT By: R. BRILL Time: 0600
3. Agency: Phone:
   Person Notified: By: Time:

Attachments: ☒ Diagram/Sketch ☐ Additional Suspects ☐ Additional Officers
☒ SWAT Plan ☐ Other:

11

DIAGRAM TWO
1363 PATRICIA AVENUE (INTERIOR)

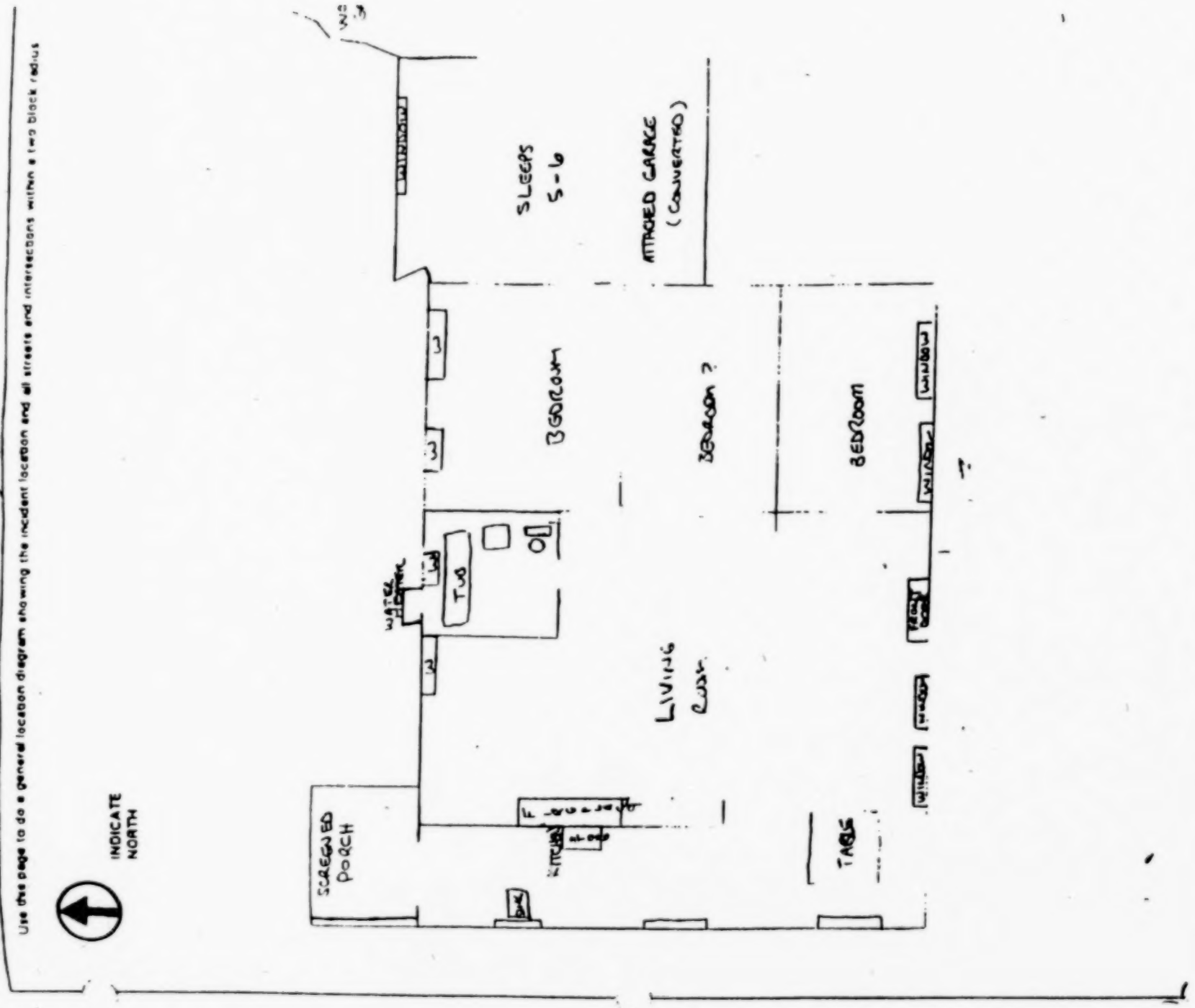


DIAGRAM THREE
1363 PATRICIA AVENUE

DIAGRAM THREE

1363 PATRICIA AVENUE

Use this page to do a detailed diagram of the specific location

INDICATE NORTH

1363 PATRICIA

STEVENS K-9

DIRT DRIVEWAY

WOOD GATE

ADAMCZYK M. HUGGS R. GRILL

GARAGE

MUELLER CHAMBERS

24

REAR YARD OF 1363

SHED

CHEVY

DANIELS GREENWOOD

TRUCK

MOTORHOME

MCCORD SUMMEY

BOAT

VAN

SHARP CARROTT

RESIDENCE (UNOCCUPIED)

ABAIL ALLEGRA

Location of Identical Floorplan: _____

CONFIDENTIAL - RETURN ALL COPIES TO TEAM LEADER

SIMI VALLEY POLICE DEPARTMENT - CITY OF SIMI VALLEY

NOTICE TO APPEAR

SV 110766

☐ TRAFFIC ☒ MISDEMEANOR ☐ NONTRAFFIC ☐ BOOKING REQ. ☐ PROBATION

DATE	TIME	DAY OF WK	CASE NO
FEB 3 1998	0830 ☒ AM ☐ PM	TUE	98-03022

NAME (FIRST, MIDDLE, LAST): RAYMOND JOSEPH ROMERO

ADDRESS: 1363 PATRICIA APT. NO.

CITY	STATE	ZIP	TELEPHONE NO.
SIMI VALLEY	CA	93065	522-9437

DRIVER'S LICENSE NO.	STATE	CLASS	BIRTHDATE
			6.10.79

RACE	SEX	HAIR	EYES	HEIGHT	WEIGHT	AGE
H	M	BLK	BRN	5.9	160	18

VEHICLE LICENSE NO.	STATE	REG EXP.	PASS M / F	☐ C.V. (VC 152.108) ☐ H.M. (VC 353)

VEH. YR	MAKE	MODEL	BODY STYLE	COLOR

REGISTERED OWNER OR LESSEE ☐ SAME AS ABOVE

ADDRESS OF OWNER OR LESSEE ☐ SAME AS ABOVE

EVIDENCE OF FINANCIAL RESPONSIBILITY ☐ YES ☐ NO

COMPANY: POLICY NO.

(VC 40610) ELIGIBLE FOR DISMISSAL: (SEE REVERSE)

VIOLATION(S)

Y	N	
☐	☐	11357(b) H&S - POSSESSION OF LESS
☐	☐	THAN 1 OZ. MARIJUANA
☐	☐	
☐	☐	
☐	☐	

SPEED: APPROX.	PSP MAX	VEH. LMT.	SAFE	RADAR: ☐ STAT ☐ MOV	GRID	VEH NO.	N / W / E / S

LOCATION OF VIOLATION(S): 2646 CIMMARON SIMI VALLEY

WEATHER: CLEAR	RAIN	FOG	SURFACE: DRY	WET	TRAFFIC: LIGHT	MEDIUM	HEAVY	LIGHT: DAWN	DAY	DUSK	NIGHT

☐ OFFENSE(S) NOT COMMITTED IN MY PRESENCE. DECLARED ON INFORMATION & BELIEF I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT THE FOREGOING IS TRUE & CORRECT.

DATE 2.3.98 ISSUING OFFICER GIULIANI I.D. NO. 321

NAME OF ARREST OFFICER (OR CITIZEN) IF DIFFERENT THAN ABOVE — OFFICER UNAVAILABLE

WITHOUT ADMITTING GUILT, I PROMISE TO APPEAR AT THE TIME & PLACE INDICATED

SIGNATURE Raymond Romero

APPEARANCE DATE AND TIME: MARCH 3 1998 TIME 8:15 ☒ AM ☐ PM

X	VENTURA COUNTY MUNICIPAL COURT, SIMI VALLEY DEPARTMENT 3855-F ALAMO ST., SIMI VALLEY, CALIFORNIA 93063
	JUVENILE TRAFFIC COURT, SIMI VALLEY DEPARTMENT 3855-F ALAMO ST., SIMI VALLEY, CALIFORNIA 93063 (WITH PARENT/GUARDIAN)
	VENTURA COUNTY MUNICIPAL COURT HALL OF JUSTICE, 800 S. VICTORIA AVE., VENTURA, CALIFORNIA 93009
	TO BE NOTIFIED BY MAIL

SV110766

FORM APPROVED BY THE JUDICIAL COUNCIL OF CALIFORNIA
REV. 10-25-96 V.C. 40500, 40513(b), 40522 P.C. 853.6a.

COURT COPY

0830
0915

TERRAMAR GRAPHICS (805) 531-0375 840797

-3 mo. on PATRICIA
Been Warnings

SIMI VALLEY POLICE DEPARTMENT
NOTICE TO APPEAR

18

SIMI VALLEY POLICE DEPARTMENT

CIC/CII CA 05609 PAGE 1 of 3

1 CASE NUMBER: 98-3016
2 SEARCH WARRANT NO:

INVENTORY OF PROPERTY TAKEN ON SEARCH WARRANT (PENAL CODE 1537)

4 DATE/TIME: 2-3-98/0845 | 5 GRID | 6 BEAT

7 ITEM NO	8 PERSON PROPERTY BOOKED TO (Last Name, First, Middle, Gen)	9 LOCATION WHERE PROPERTY FOUND OR TAKEN INTO CUSTODY
1	ROMERO, RAYMUND	1363 PATRICIA

10 PROPERTY: Itemized, Detailed Description of Same, Including Color, Size, Serial Number, Etc.: NOTEBOOKS CONTAINING MISC GANG WRITINGS RECOVERED FROM FLOOR NEAR PHONE IN P.R. BEDROOM

11 STORAGE LOCATION:

12 EVIDENCE/WORK REQUESTED:

13 OFFICER LOCATING PROPERTY/ID NO	14 PHOTO	15 OFFICER SEIZING PROPERTY/ID NO	16 OFFICER BOOKING PROPERTY
M. HODGES 309	☐ Yes ■ No	R. BRILL 322	R. BRILL 322

17 ITEM NO	18 PERSON PROPERTY BOOKED TO (Last Name, First, Middle, Gen)	19 LOCATION WHERE PROPERTY FOUND OR TAKEN INTO CUSTODY
2	ROMERO, RAYMOND	1363 PATRICIA

20 PROPERTY: Itemized, Detailed Description of Same, Including Color, Size, Serial Number, Etc.: NEWSPAPER ARTICLES REGARDING DRIVE BY SHOOTING. RECOVERED FROM TOP OF TV IN P.R. ROOM

21 STORAGE LOCATION:

22 EVIDENCE/WORK REQUESTED:

23 OFFICER LOCATING PROPERTY/ID NO	24 PHOTO	25 OFFICER SEIZING PROPERTY/ID NO	26 OFFICER BOOKING PROPERTY
M. HODGES 309	☐ Yes ☒ No	R. BRILL 322	R. BRILL 322

27 ITEM NO	28 PERSON PROPERTY BOOKED TO (Last Name, First, Middle, Gen)	29 LOCATION WHERE PROPERTY FOUND OR TAKEN INTO CUSTODY
3	ROMERO, RAYMOND	1363 PATRICIA

30 PROPERTY: Itemized, Detailed Description of Same, Including Color, Size, Serial Number, Etc.: WALLET CONTAINS I.D OF RAYMUND ROMERO RECOVERED FROM TV STAND DRAWER IN P.R. ROOM CONTAINS $140.00

31 STORAGE LOCATION:

32 EVIDENCE/WORK REQUESTED:

33 OFFICER LOCATING PROPERTY/ID NO	34 PHOTO	35 OFFICER SEIZING PROPERTY/ID NO	36 OFFICER BOOKING PROPERTY
N. HODGES 309	☐ Yes ☒ No	R. BRILL 322	R. BRILL 322

37 ITEM NO	38 PERSON PROPERTY BOOKED TO (Last Name, First, Middle, Gen)	39 LOCATION WHERE PROPERTY FOUND OR TAKEN INTO CUSTODY
4	ROMERO, RAYMOND	1363 PATRICIA

40 PROPERTY: Itemized, Detailed Description of Same, Including Color, Size, Serial Number, Etc.: (25) .25 AUTO BULLETS CONTAINED IN BOX BRAND: WINCHESTER. RECOVERED FROM BOTTOM SHELF IN CLOSET OF P.R. ROOM.

41 STORAGE LOCATION:

42 EVIDENCE/WORK REQUESTED:

43 OFFICER LOCATING PROPERTY/ID NO	44 PHOTO	45 OFFICER SEIZING PROPERTY/ID NO	46 OFFICER BOOKING PROPERTY
M. HODGES 309	☐ Yes ☒ No	R. BRILL 322	R. BRILL 322

47 ITEM NO	48 PERSON PROPERTY BOOKED TO (Last Name, First, Middle, Gen)	49 LOCATION WHERE PROPERTY FOUND OR TAKEN INTO CUSTODY
5	ROMERO, RAYMOND	1363 PATRICIA

50 PROPERTY: Itemized, Detailed Description of Same, Including Color, Size, Serial Number, Etc.: (2.) GANG T-SHIRTS RECOVERED FROM CLOSET OF P.R. ROOM

51 STORAGE LOCATION:

52 EVIDENCE/WORK REQUESTED:

53 OFFICER LOCATING PROPERTY/ID NO.	54 PHOTO	55 OFFICER SEIZING PROPERTY/ID NO	56 OFFICER BOOKING PROPERTY
M. HODGES 309	☐ Yes ☒ No	R. BRILL 322	R. BRILL 322

57 ITEM NO	58 PERSON PROPERTY BOOKED TO (Last Name, First, Middle, Gen)	59 LOCATION WHERE PROPERTY FOUND OR TAKEN INTO CUSTODY
6	ROMERO, RAYMOND	1363 PATRICIA

60 PROPERTY: Itemized, Detailed Description of Same, Including Color, Size, Serial Number, Etc.: BASEBALL BAT CONTAINS GANG WRITING RECOVERED FROM CLOSET IN P.R. ROOM

61 STORAGE LOCATION:

62 EVIDENCE/WORK REQUESTED:

63 OFFICER LOCATING PROPERTY/ID NO	64 PHOTO	65 OFFICER SEIZING PROPERTY/ID NO	66 OFFICER BOOKING PROPERTY
M. HODGES 309	☐ Yes ☒ No	R. BRILL 322	R. BRILL 322

I R. BRILL 322 2-3-98/0820

The above is a detailed list of all property taken by me under authority of a search warrant issued the 29 day of JANUARY, 1998, in the Ventura County MUNICIPAL Court.

Officer's Signature R. BRILL 19

SIMI VALLEY POLICE DEPARTMENT

SIMI VALLEY POLICE DEPARTMENT

1 CASE NUMBER: 98-3016

2 SEARCH WARRANT NO:

CIC/CII CA 05609

PAGE 2 of 3

INVENTORY OF PROPERTY TAKEN ON SEARCH WARRANT (PENAL CODE 1537)

4 DATE/TIME: 2-3-98 / 0845

5 GRID:

6 BEAT:

7 ITEM NO	8 PERSON PROPERTY BOOKED TO (Last Name, First, Middle, Gen)	9 LOCATION WHERE PROPERTY FOUND OR TAKEN INTO CUSTODY
7	ROMERO, RAYMUND	1363 PATRICIA

10 PROPERTY Itemized, Detailed Description of Same, Including Color, Size, Serial Number, Etc: AMERICAN ME VIDEO TAPE FROM VCR ON TV. IN P.R. ROOM

11 STORAGE LOCATION:

12 EVIDENCE/WORK REQUESTED:

13 OFFICER LOCATING PROPERTY/ID NO	14 PHOTO	15 OFFICER SEIZING PHOPERTY/ID NO	16 OFFICER BOOKING PROPERTY
R. BRILL 322	☐ Yes ☒ No	R. BRILL 322	R. BRILL 322

17 ITEM NO	18 PERSON PROPERTY BOOKED TO (Last Name, First, Middle, Gen)	19 LOCATION WHERE PROPERTY FOUND OR TAKEN INTO CUSTODY
8	ROMERO, RAYMUND	1363 PATRICIA

20 PROPERTY Itemized, Detailed Description of Same, Including Color, Size, Serial Number, Etc: TELEPHONE CONTAINS GANG WRITING RECOVERED FROM P.R. ROOM

21 STORAGE LOCATION:

22 EVIDENCE/WORK REQUESTED:

23 OFFICER LOCATING PROPERTY/ID NO	24 PHOTO	25 OFFICER SEIZING PROPERTY/ID NO	26 OFFICER BOOKING PROPERTY
R. BRILL 322	☐ Yes ☒ No	R. BRILL 322	R. BRILL 322

27 ITEM NO	28 PERSON PROPERTY BOOKED TO (Last Name, First, Middle, Gen)	29 LOCATION WHERE PROPERTY FOUND OR TAKEN INTO CUSTODY
9	ROMERO, RAYMOND	1363 PATRICIA

30 PROPERTY Itemized, Detailed Description of Same, Including Color, Size, Serial Number, Etc: (1) BLOW GUN RECOVERED FROM PINK ROOM

31 STORAGE LOCATION:

32 EVIDENCE/WORK REQUESTED:

33 OFFICER LOCATING PROPERTY/ID NO	34 PHOTO	35 OFFICER SEIZING PROPERTY/ID NO	36 OFFICER BOOKING PROPERTY
M. HUGG 322	☐ Yes ☒ No	R. BRILL 322	R. BRILL 322

37 ITEM NO	38 PERSON PROPERTY BOOKED TO (Last Name, First, Middle, Gen)	39 LOCATION WHERE PROPERTY FOUND OR TAKEN INTO CUSTODY
10	MARCO CARDON	1363 PATRICIA

40 PROPERTY Itemized, Detailed Description of Same, Including Color, Size, Serial Number, Etc: (1) .22 CAL SEMI-AUTO HANDGUN SER# AE71630 BRAND: IVER JOHNSON W/MAGAZINE SER# CP5525. W.11 MISC ID. FROM DESK DRAWER IN PORCH ROOM W/CASE

41 STORAGE LOCATION:

42 EVIDENCE/WORK REQUESTED:

43 OFFICER LOCATING PROPERTY/ID NO	44 PHOTO	45 OFFICER SEIZING PROPERTY/ID NO	46 OFFICER BOOKING PROPERTY
R. JONES 305	☐ Yes ☒ No	R. BRILL 322	R. BRILL 322

47 ITEM NO	48 PERSON PROPERTY BOOKED TO (Last Name, First, Middle, Gen)	49 LOCATION WHERE PROPERTY FOUND OR TAKEN INTO CUSTODY
11	MARCO CARDON	1363 PATRICIA

50 PROPERTY Itemized, Detailed Description of Same, Including Color, Size, Serial Number, Etc: .22 CALIBER ROUNDS OF AMMUNITION RECOVERED FROM PORCH ROOM

51 STORAGE LOCATION:

52 EVIDENCE/WORK REQUESTED:

53 OFFICER LOCATING PROPERTY/ID NO.	54 PHOTO	55 OFFICER SEIZING PROPERTY/ID NO	56 OFFICER BOOKING PROPERTY
R. JONES 305	☐ Yes ☒ No	R. BRILL 322	R. BRILL 322

57 ITEM NO	58 PERSON PROPERTY BOOKED TO (Last Name, First, Middle, Gen)	59 LOCATION WHERE PROPERTY FOUND OR TAKEN INTO CUSTODY
12	ROMERO, RAYMOND	1363 PATRICIA

60 PROPERTY Itemized, Detailed Description of Same, Including Color, Size, Serial Number, Etc: (1) LARGE BASEBALL BAT CONTAINS GANG WRITING

61 STORAGE LOCATION:

62 EVIDENCE/WORK REQUESTED:

63 OFFICER LOCATING PROPERTY/ID NO	64 PHOTO	65 OFFICER SEIZING PROPERTY/ID NO	66 OFFICER BOOKING PROPERTY
R. JONES 305	☐ Yes ☒ No	R. BRILL 322	R. BRILL 322

R. BRILL 322 2-3-98 / 0845

The above is a detailed list of all property taken by me under authority of a search warrant issued the 29th day of JANUARY, 19 98, in the Ventura County MUNICIPAL Court.

Officer's Signature _____

SIMI VALLEY POLICE DEPARTMENT

NCIC/CII CA 05609

PAGE 3 of 3

1 CASE NUMBER: 98-3016

2 SEARCH WARRANT NO:

INVENTORY OF PROPERTY TAKEN ON SEARCH WARRANT (PENAL CODE 1537)

4 DATE/TIME: 2-3-98 / 0845

5 GRID:

6 BEAT:

7 ITEM NO	8 PERSON PROPERTY BOOKED TO (Last Name, First, Middle, Gen)	9 LOCATION WHERE PROPERTY FOUND OR TAKEN INTO CUSTODY
13	ROMERO RAYMUND	1363 PATRICIA

10 PROPERTY: Itemized, Detailed Description of Same, Including Color, Size, Serial Number, Etc.: MISC FIREWORKS FOUND IN P.R. ROOM

11 STORAGE LOCATION:

12 EVIDENCE/WORK REQUESTED:

13 OFFICER LOCATING PROPERTY/ID NO	14 PHOTO	15 OFFICER SEIZING PROPERTY/ID NO	16 OFFICER BOOKING PROPERTY
R. BRILL 322	☐ Yes ☒ No	R. BRILL 322	R. BRILL 322

17 ITEM NO	18 PERSON PROPERTY BOOKED TO (Last Name, First, Middle, Gen)	19 LOCATION WHERE PROPERTY FOUND OR TAKEN INTO CUSTODY
14	HYNES, SHAWN	1363 PATRICIA

20 PROPERTY: Itemized, Detailed Description of Same, Including Color, Size, Serial Number, Etc.: 2.0 - LOCK BAGGY CONTAINS MARIJUANA — TOTAL WGHT: 14.6gg

21 STORAGE LOCATION:

22 EVIDENCE/WORK REQUESTED:

23 OFFICER LOCATING PROPERTY/ID NO	24 PHOTO	25 OFFICER SEIZING PROPERTY/ID NO	26 OFFICER BOOKING PROPERTY
V. ALLEGRA 320	☐ Yes ☒ No	V. ALLEGRA 320	R. BRILL 322

27 ITEM NO	28 PERSON PROPERTY BOOKED TO (Last Name, First, Middle, Gen)	29 LOCATION WHERE PROPERTY FOUND OR TAKEN INTO CUSTODY
15	ROMERO, RAYMOND	1363 PATRICIA

30 PROPERTY: Itemized, Detailed Description of Same, Including Color, Size, Serial Number, Etc.: 35MM FILM DEPICTS DAMAGE TO PATRICIA HOUSE

31 STORAGE LOCATION:

32 EVIDENCE/WORK REQUESTED:

33 OFFICER LOCATING PROPERTY/ID NO	34 PHOTO	35 OFFICER SEIZING PROPERTY/ID NO	36 OFFICER BOOKING PROPERTY
MCCONNELL	☐ Yes ☒ No	MCCONNELL	R. BRILL 322

37 ITEM NO	38 PERSON PROPERTY BOOKED TO (Last Name, First, Middle, Gen)	39 LOCATION WHERE PROPERTY FOUND OR TAKEN INTO CUSTODY
16	ROMERO RAYMOND	1363 PATRICIA

40 PROPERTY: Itemized, Detailed Description of Same, Including Color, Size, Serial Number, Etc.: VIDEO TAPE OF INTERIOR: PRE AND POST SEARCH

41 STORAGE LOCATION:

42 EVIDENCE/WORK REQUESTED:

43 OFFICER LOCATING PROPERTY/ID NO	44 PHOTO	45 OFFICER SEIZING PROPERTY/ID NO	46 OFFICER BOOKING PROPER
MCCONNELL	☐ Yes ☒ No	MCCONNELL	R. BRILL 322

47 ITEM NO	48 PERSON PROPERTY BOOKED TO (Last Name, First, Middle, Gen)	49 LOCATION WHERE PROPERTY FOUND OR TAKEN INTO CUSTODY

50 PROPERTY: Itemized, Detailed Description of Same, Including Color, Size, Serial Number, Etc.:

51 STORAGE LOCATION:

52 EVIDENCE/WORK REQUESTED:

53 OFFICER LOCATING PROPERTY/ID NO.	54 PHOTO	55 OFFICER SEIZING PROPERTY/ID NO	56 OFFICER BOOKING PROPERTY
	☐ Yes ☐ No		

57 ITEM NO	58 PERSON PROPERTY BOOKED TO (Last Name, First, Middle, Gen)	59 LOCATION WHERE PROPERTY FOUND OR TAKEN INTO CUSTODY

60 PROPERTY: Itemized, Detailed Description of Same, Including Color, Size, Serial Number, Etc.:

61 STORAGE LOCATION:

62 EVIDENCE/WORK REQUESTED:

63 OFFICER LOCATING PROPERTY/ID NO	64 PHOTO	65 OFFICER SEIZING PROPERTY/ID NO	66 OFFICER BOOKING PROPERTY
	☐ Yes ☐ No		

R. BRILL 322 2-3-98 0845 DTH3

The above is a detailed list of all property taken by me under authority of a search warrant issued the 2-3-98 day of JANUARY, 19 98, in the Ventura County MUNICIPAL Court. 98-3016

Officer's Signature R BRILL 21

SIMI VALLEY POLICE DEPARTMENT

BEST AVAILABLE COPY

JURY NOTE NO. 5
[Filed June 21, 2001]

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

DATE: 6-21-01
TIME:

CASE NO. CV98-8512-AHM
CASE NAME: Iris Mena, et al v. City of Simi Valley, et al.,

THE JURY HAS REACHED A UNANIMOUS VERDICT __

THE JURY REQUESTS THE FOLLOWING:

Legal question: is the use of handcuffs equal to the use of force?

ANSWER: Yes

/s/ A. H. Matz
U.S.D.J.

/s/ Patricia Casta
Hope Corneja
FOREPERSON OF THE JURY

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

[Filed June 21, 2001]

CASE NO. CV 98-8512 AHM

IRIS MENA and JOSE E. MENA,
Plaintiffs,

v.

CITY OF SIMI VALLEY, *et al.*,
Defendants.

SPECIAL VERDICT

We, the jury in the above-entitled action, based on the evidence presented and on the instructions given to us by the Court, now reach our verdict on the issues submitted to us.

QUESTION NO. 1:

(a) Do you find that defendant William Lappin violated the rights of plaintiffs under the Fourth Amendment to the United States Constitution to be free from unreasonable search by failing to properly knock and announce the presence of the officers at 1363 Patricia Avenue and by unnecessarily destroying property during the initial entry?

_____	X
Yes	No

(b) If and only if you answered "Yes" to part (a), then answer this question: What do you find to be the total

amount of damages, if any, sustained by plaintiff Iris Mena as a result of the conduct of William Lappin?

Amount: $_____.

(If you find that Iris Mena suffered no actual damage, you must award her nominal damages in the amount not to exceed $ 1.00 (one dollar), but only if you answered "Yes" to part (a).)

Please proceed to the next question.

(c) If and only if you answered "Yes" to part (a), then answer this question: What do you find to be the total amount of damages, if any, sustained by plaintiff Jose Mena as a result of the conduct of William Lappin?

Amount: $_____.

(If you find that Jose Mena suffered no actual damage, you must award her [sic] nominal damages in the amount not to exceed $1.00 (one dollar), but only if you answered "Yes" to part (a).)

Please proceed to the next question.

QUESTION NO. 2:

(a) Do you find that defendant Vincent Allegra violated plaintiff Jose Mena's right under the Fourth Amendment to the United States Constitution to be free from unreasonable search by unnecessarily using excessive force on the door into the bedroom known as the "converted porch area" at the home Jose Mena owned at 1363 Patricia Avenue?

_____	X
Yes	No

(b) If and only if you answered "Yes" to part (a), then answer this question: What do you find to be the total

amount of damages, if any, sustained by plaintiff Jose Mena as a result of the conduct of Vincent Allegra?

Amount: $_____.

(If you find that Jose Mena suffered no actual damage, you must award him nominal damages in the amount not to exceed $1.00 (one dollar), but only if you answered "Yes" to part (a).)

Please proceed to the next question.

QUESTION NO. 3:

(a) Do you find that defendant Darin Muehler violated the Fourth Amendment rights of Jose Mena or Iris Mena to be from unreasonable search by permitting or causing the search of 1363 Patricia Avenue to be conducted at portions of the premises other than the bedroom of Raymond Romero and common areas, once Romero's bedroom had been identified?

_____ Yes X No

(b) If and only if you answered "Yes" to part (a), then answer this question: What do you find to be the amount of damages, if any, sustained by plaintiff Iris Mena as a result of the conduct of Darin Muehler concerning the continuation of the search?

Amount: $_____.

(If you find that Iris Mena suffered no actual damage, you must award her nominal damages in the amount not to exceed $1.00 (one dollar), but only if you answered "Yes" to part (a).)

Amount: $_____.

(c) If and only if you answered "Yes" to part (a), then answer this question: What do you find to be the

amount of damages, if any, sustained by plaintiff Jose Mena as a result of the conduct of Darin Muehler concerning the continuation of the search? (If you find that Jose Mena suffered no actual damage, you must award him nominal damages in the amount not to exceed $1.00 (one dollar), but only if you answered "Yes" to part (a).)

Amount: $_____.

Please proceed to the next question.

QUESTION NO. 4:

(a) Do you find that defendant Robert Brill violated the Fourth Amendment rights of Jose Mena or Iris Mena to be from unreasonable search by permitting or causing the search of 1363 Patricia Avenue to be conducted at portions of the premises other than the bedroom of Raymond Romero and common areas, once Romero's bedroom had been identified?

_____ Yes X No

(b) If and only if you answered "Yes" to part (a), then answer this question: What do you find to be the total amount of damages, if any, sustained by plaintiff Iris Mena as a result of the conduct of Robert Brill concerning the continuation of the search?

Amount: $_____.

(If you find that Iris Mena suffered no actual damage, you must award her nominal damages in the amount not to exceed $1.00 (one dollar), but only if you answered "Yes" to part (a).)

Amount: $_____.

(c) If and only if you answered "Yes" to part (a), then answer this question: What do you find to be the total amount of damages, if any, sustained by plaintiff Jose Mena as a result of the conduct of Robert Brill concerning the continuation of the search? (If you find that Jose Mena suffered no actual damage, you must award him nominal damages in the amount not to exceed $1.00 (one dollar), but only if you answered "Yes" to part (a).)

Amount: $_____.

Please proceed to the next question.

QUESTION NO. 5: Do you find that either of the defendant officers named below violated plaintiff Iris Mena's right under the Fourth Amendment to the United States Constitution to be free from unreasonable seizure by detaining her with force greater than that which was reasonable under the circumstances?

	Yes	No
Darin Muehler	X	___
Robert Brill	X	___

Please proceed to the next question.

QUESTION NO. 6: Do you find that either of the defendant officers named below violated plaintiff Iris Mena's right under the Fourth Amendment to the United States Constitution to be free from unreasonable seizure by detaining her for a longer period than reasonable?

	Yes	No
Darin Muehler	X	___
Robert Brill	X	___

Please proceed to the next question.

QUESTION NO. 7: Concerning Darin Muehler, if you answered "Yes" to either question 5 or question 6, then answer this question: What do you find to be the total amount of damages, if any, sustained by plaintiff Iris Mena as a result of the conduct of Darin Muehler concerning her detention? (If you find that Iris Mena suffered no actual damage, you must award her nominal damage in the amount not to exceed $1.00 (one dollar), but only if you answered "Yes" to either question 5 or question 6.)

Amount: $10,000.

Please proceed to the next question.

QUESTION NO. 8: Concerning Robert Brill, if you answered "Yes" to either question 5 or question 6, then answer this question: What do you find to be the total amount of damages, if any, sustained by plaintiff Iris Mena as a result of the conduct of Robert Brill concerning her detention? (If you find that Iris Mena suffered no actual damage, you must award her nominal damage in the amount not to exceed $ 1.00 (one dollar), but only if you answered "Yes" to either question 5 or question 6.)

Amount: $10,000.

Please proceed to the next question.

QUESTION NO. 9:

(a) If and only if you answered "Yes" to question 1(a), answer this question. Was the conduct of William Lappin concerning the initial entry through the front door malicious, oppressive or in reckless disregard of Iris Mena's rights?

Yes___ No___

(b) If your answer to the preceding question was "Yes", then what do you find to be the amount of punitive

damages, if any, that should be awarded to Iris Mena and against defendant Lappin?

Amount: $_____.

(c) If and only if you answered "Yes" to question 1(a), answer this question. Was the conduct of William Lappin concerning the initial entry through the front door malicious, oppressive or in reckless disregard of Jose Mena's rights?

Yes___ No___

Please proceed to the next question.

(d) If your answer to the preceding question was "Yes", then what do you find to be the amount of punitive damages, if any, that should be awarded to Jose Mena and against defendant Lappin?

Amount: $_____.

QUESTION NO. 10:

(a) If and only if you answered "Yes" to question 2(a), answer this question. Was the conduct of Vincent Allegra concerning the destruction of the converted porch area door malicious, oppressive or in reckless disregard of Jose Mena's rights?

Yes___ No___

(b) If your answer to the preceding question was "Yes", then what do you find to be the amount of punitive damages, if any, that should be awarded to Jose Mena and against defendant Allegra?

Amount: $_____.

Please proceed to the next question.

QUESTION NO. 11:

(a) If and only if you answered "Yes" to question 3(a), answer this question. Was the conduct of Darin Muehler concerning the continuation of the search malicious, oppressive or in reckless disregard of Iris Mena's rights?

Yes___ No___

(b) If your answer to the preceding question was "Yes", then what do you find to be the amount of punitive damages, if any, that should be awarded to Iris Mena and against defendant Muehler for continuing the search?

Amount: $_____.

(c) If and only if you answered "Yes" to question 3(a), answer this question. Was the conduct of Darin Muehler concerning the continuation of the search malicious, oppressive or in reckless disregard of Jose Mena's rights?

Yes___ No___

(d) If your answer to the preceding question was "Yes", then what do you find to be the amount of punitive damages, if any, that should be awarded to Jose Mena and against defendant Muehler for continuing the search?

Amount: $_____.

Please proceed to the next question.

QUESTION NO. 12:

(a) If and only if you answered "Yes" to question 4(a), answer this question. Was the conduct of Robert Brill concerning the continuation of the search malicious,

oppressive or in reckless disregard of Iris Mena's rights?

Yes___ No___

(b) If your answer to the preceding question was "Yes", then what do you find to be the amount of punitivedamages, if any, that should be awarded to Iris Mena and against defendant Brill for continuing the search?

Amount: $_____.

(c) If and only if you answered "Yes" to question 4(a), answer this question. Was the conduct of Robert Brill concerning the continuation of the search malicious, oppressive or in reckless disregard of Jose Mena's rights?

Yes___ No___

(d) If your answer to the preceding question was "Yes", then what do you find to be the amount of punitive damages, if any, that should be awarded to Jose Mena and against defendant Brill for continuing the search?

Amount: $_____.

QUESTION NO. 13:

(a) Concerning Darin Muehler, if and only if you answered "Yes" to either or both questions 5 and 6, answer this question: Was the conduct of Darin Muehler concern-ing the detention of Iris Mena malicious, oppressive or in reckless disregard of Iris Mena's rights?

Yes X No___

(b) If your answer to the preceding question was "Yes," then what do you find to be the amount of punitive damages, if any, that should be awarded to Iris Mena against Darin Muehler concerning her detention?

Amount $ 20,000

QUESTION NO. 14:

(a) Concerning Robert Brill, if and only if you answered "Yes" to either or both questions 5 and 6, answer this question: Was the conduct of Robert Brill concerning the detention of Iris Mena malicious, oppressive or in reckless disregard of Iris Mena's rights?

Yes X No___

(b) If your answer to the preceding question was "Yes," then what do you find to be the amount of punitive damages, if any, that should be awarded to Iris Mena against Robert Brill concerning her detention?

Amount $ 20,000

PLEASE SIGN AND RETURN THIS VERDICT FORM TO THE COURT

Dated: 6-21-01

/s/ [ILLEGIBLE]
FOREPERSON

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

[Filed July 25, 2001]

CASE NO.: CV 98-8512 AHM (AIJx)

IRIS MENA and JOSE MENA,
Plaintiff,

vs.

CITY OF SIMI VALLEY, *et al.*,
Defendants.

NOTICE OF MOTION AND MOTION TO ALTER OR AMEND JUDGMENT (F.R.CIV.P. 59(e) OR, ALTERNATIVELY, FOR NEW TRIAL (F.R.CIV.P. 59(a) AND RENEWED MOTION FOR JUDGMENT AS A MATTER OF LAW (F.R.CIV.P. 50(b); MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF DAVID L. NYE

DATE: August 20, 2001
TIME: 10:00 a.m.
CTRM: 14

TO PLAINTIFFS AND TO THEIR ATTORNEY OF RECORD:

NOTICE IS HEREBY GIVEN that on August 20, 2001, at 10:00 a.m. or as soon thereafter as the motion may be heard by the above-entitled Court, located at 213 North Spring Street, Los Angeles, California, defendants DARIN MUEHLER and ROBERT BRILL will and hereby do move

this Court to alter or amend the judgment pursuant to Federal Rules of Civil Procedure, Rule 59(e), or, alternatively, for a new trial pursuant to Federal Rules of Civil Procedure, Rule 59(a), and also renew their motion for judgment as a matter of law pursuant to Federal Rules of Civil Procedure, Rule 50(b).

This motion is made upon the following grounds: 1) the Supreme Court's opinion in *Saucier v. Katz*, 121 S.Ct. 2151 (2001), which explicitly rejects and overrules the Ninth Circuit's analysis of qualified immunity claims, constitutes an intervening change in controlling law and mandates that the defendants should be granted qualified immunity on Iris Mena's unlawful detention claim; 2) error of law occurring at time of trial with regard to the jury instructions on the issue of unlawful seizure; and 3) insufficiency of the evidence to support the award of punitive damages.

This motion is based upon this Notice of Motion and Motion, the accompanying Memorandum of Points and Authorities, the Declaration of David L. Nye, all pleadings and papers on file in this action, the minutes of the court clerk, the reporter's transcript, and upon such other matters as may be presented to the Court at the time of the hearing.

DATED: July 24, 2001

CARRINGTON & NYE

/s/ [ILLEGIBLE]
David L. Nye
Karen K. Peabody
Attorneys for Defendants